



JUDICIARY COMMITTEE

MEETING PACKET

Wednesday, March 22, 2006

10:15 a.m. – 12:00 p.m.

Morris Hall

(17 HOB)

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Judiciary Committee

Start Date and Time: Wednesday, March 22, 2006 10:15 am

End Date and Time: Wednesday, March 22, 2006 12:00 pm

Location: Morris Hall (17 HOB)

Duration: 1.75 hrs

Consideration of the following bill(s):

HB 129 Lawful Ownership, Possession, and Use of Firearms and Other Weapons by Baxley

HB 709 Court Costs for Drug Court Programs by Quinones

HB 839 CS Homeowners' Associations by Kottkamp

HB 1049 CS Driver's Licenses by Traviesa

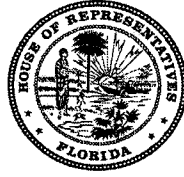
HB 7047 Review under the Open Government Sunset Review Act regarding the Tobacco Settlement Agreement by Governmental Operations Committee

Workshop on the legal framework and liability considerations concerning offshore petroleum/natural gas activities.

Pursuant to Rule 7.22(c), the deadline for amendments to bills on the agenda by non-appointed Members shall be 5:00 p.m., Tuesday, March 21, 2006.

By the request of the Chair, all Members are asked to have amendments to bills on the agenda by 5:00 p.m., Tuesday, March 21, 2006.

NOTICE FINALIZED on 03/20/2006 15:51 by Williams.Tanesha



Florida House of Representatives

Judiciary Committee

Allan G. Bense
Speaker

David Simmons
Chair

COMMITTEE ON JUDICIARY

Morris Hall (17 HOB)

March 22, 2006

10:15 a.m. – 12:00 p.m.

Agenda

1. Call to order
2. Roll call
3. Welcome and opening remarks

Representative David Simmons, Chair

4. Consideration of the following bills:

| <u>Bill</u> | <u>Sponsor(s)</u> | <u>Title</u> |
|-------------|-------------------|---|
| HB 129 | Baxley | Lawful Ownership, Possession, and Use of Firearms and Other Weapons |
| HB 709 | Quinones | Drug Court Programs |
| HB 839 CS | Kottkamp | Homeowners' Associations |
| HB 1049 CS | Traviesa | Driver's Licenses |
| HB 7047 | Rivera | Review under the Open Government Sunset Review Act regarding the Tobacco Settlement Agreement |

5. Workshop on the legal framework and liability considerations concerning offshore petroleum/natural gas activities.

6. Closing remarks

Representative David Simmons, Chair

7. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129



Lawful Ownership, Possession, and Use of Firearms and Other

Weapons

SPONSOR(S): Baxley and others

TIED BILLS:

IDEN./SIM. BILLS: SB 206

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------------------|--------|--|---|
| 1) Judiciary Committee | | Thomas  | Hogge  |
| 2) Agriculture Committee | | | |
| 3) Justice Council | | | |
| 4) | | | |
| 5) | | | |

SUMMARY ANALYSIS

The bill addresses provisions relating to the storage and transport of firearms in a motor vehicle on property set aside for the parking of a motor vehicle.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill.

The bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

The bill takes effect upon becoming a law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty: the bill limits the ability of persons and businesses to maintain certain policies related to their premises, but permits lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles.

Promote Personal Responsibility: the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles.

Maintain Public Security: the bill affects policies regarding the possession of firearms in vehicles in certain locations.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

A firearm is defined as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime."¹

Section 790.053, F.S., provides that it is unlawful to openly carry any firearm or electric weapon, except a person may openly carry a self-defense chemical spray or a nonlethal stun gun or other nonlethal electric weapon that does not fire a or projectile and is designed solely for defensive purposes. A violation of this provision is a misdemeanor of the second degree.

Section 790.06, F.S., provides that the Department of Agriculture and Consumer Services may issue licenses to persons qualified to carry concealed weapons or firearms. A concealed weapon or firearm is defined as "a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined in s. 790.001(9)."

Section 790.25, F.S., provides for the lawful and unlawful ownership, possession, and use of firearms and other weapons. It specifically prohibits the carrying of a concealed firearm or weapon without a permit. This section provides that the provisions of s. 790.053, F.S., and s. 790.06, F.S., discussed above, do not apply to:

- Members of the military, law enforcement, or persons carrying out or training for emergency management duties;
- Guards or messengers of common carriers;
- Members of any organization duly authorized to purchase or receive weapons;
- A person engaged in fishing, camping, or lawful hunting or going to or returning from a fishing, camping, or lawful hunting expedition;
- A person engaged in the business of manufacturing, repairing, or dealing in firearms;
- A person firing weapons for testing or target practice;
- A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession;

¹ Section 790.001(6), F.S.

- A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business;
- A person possessing arms at his or her home or place of business; or
- Investigators employed by the several public defenders of the state or the capital collateral representative.

Subsection (5) of s. 790.06, F.S., specifically provides that it is lawful "for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use."

Schools

In addition to the statutes discussed above regarding the possession of firearms, each district school board in Florida is required to have a zero-tolerance policy regarding the possession of firearms by students on school grounds.² A violation of the policy must result in a least a one-year expulsion from school and referral to the criminal justice or juvenile justice system. Trespassers that carry a weapon or firearm on school property, public or private, commit a felony of the third degree.³

Congress enacted the Gun Free School Zones Act in 1990.⁴ It was subsequently overturned by the United States Supreme Court as a violation of Congress's powers under the commerce clause to regulate inter-state commerce.⁵ The Act was passed again in 1996 with changes to address the concerns of the Supreme Court that made it only applicable to guns that crossed state lines in commerce.⁶ In general, the Act makes it unlawful for any person to possess a firearm in a school zone. The term "school zone" means "in, or on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school." The term "school" means "a school which provides elementary or secondary education, as determined under State law." Whoever violates the Act may be fined up to \$5,000, imprisoned up to five years, or both. Exceptions to this Act include:

- if the person is licensed to do so;
- if the firearm is not loaded and in a locked container, or a locked firearms rack which is in a motor vehicle;
- by an individual for use in a program approved by a school in the school zone;
- by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- by a law enforcement officer acting in his or her official capacity; or
- the firearm is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

Other States

Oklahoma and Alaska have passed laws prohibiting persons and businesses from banning the otherwise lawful possession of a firearm in a locked vehicle in a parking lot.⁷ The Oklahoma statute

² Section 1006:13(2), F.S.

Section 810.095, F.S.

⁴ P.L. 101-647, Sec. 1702(b)(1), 18 USC ss. 921 and 922.

⁵ U.S. v. Lopez, 514 US 549 (1995).

⁶ P.L. 104-208.

⁷ Alaska Stat. Art. 10A, Sec. 18.65.800; Okla. Stat. tit. 21, Pt. IV, Ch. 53, Sec. 1289.7a.

has not taken effect pending the outcome of federal litigation seeking to overturn the law.⁸ Georgia and Indiana have similar legislation pending.⁹

Occupational Violence

An average of 1.7 million people were victims of violent crime while working or on duty in the United States each year from 1993 through 1999, including an average of 1.3 million simple assaults, 325,000 aggravated assaults, 36,500 rapes and sexual assaults, 70,000 robberies, and 900 homicides.¹⁰ In 2001, there were 639 workplace homicides in the U.S., the lowest number since the Census of Fatal Occupational Injuries began in 1992 (just over 80% of these were from shootings). Of the occupations examined, police officers, corrections officers, and taxi drivers were victimized at the highest rates. Businesses can be and have been held liable for crimes occurring on their property where they were found to be negligent in providing security.

Effect of Proposed Changes:

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that is locked in or locked to a motor vehicle that is on any premises set aside for the parking of motor vehicles. The bill creates a criminal penalty of a third degree felony for violation of the prohibition created by the bill. A third degree felony is punishable, pursuant to s. 775.082 and s. 775.083, F.S., by a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000.

The bill provides to any person or entity immunity from civil liability for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and stored in a locked motor vehicle on the person's or entity's property that was set aside for the parking of motor vehicles. This immunity does not apply if the person or entity commits a criminal act involving the use of such firearm.

The bill provides that a person who is injured due to a policy prohibited by the bill may sue the person or entity with such policy, and if he or she prevails, the court shall award actual damages, court costs, and attorney fees and enjoin any further violations. If an employee who is lawfully transporting or storing a firearm in a locked motor vehicle on property set aside for parking is discharged for violating a policy prohibited under this bill, the employee is entitled to reinstatement to the same or equivalent position, including any fringe benefits and seniority rights, compensation for any lost wages, benefits, or other lost remuneration caused by the termination, and payment of attorney's fees and costs.

The bill defines "motor vehicle" as any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, or any other vehicle required to be registered under Florida law. The bill states that the intent of the new law is "to reinforce and protect the right of each law-abiding citizen to enter and exit any parking lot, parking facility, or space used for the parking of motor vehicles while such person is lawfully transporting and storing a firearm or firearms in the motor vehicle and the firearm or firearms are locked in or locked to the motor vehicle, to avail himself or herself of temporary or long-term parking or storage of a motor vehicle, and to prohibit any infringement of the right to lawful possession of firearms when such firearms are being transported and stored in a vehicle for a lawful purpose."

⁸ The Williams Co. and ConocoPhillips Co. have sued the State of Oklahoma in U.S. District Court, Northern District of Oklahoma, No. 04-CV-820 H(J). The federal court enjoined the enforcement of the statute pending the litigation. It certified to the Court of Criminal Appeals of Oklahoma the question of whether the statute was a criminal statute. The Court of Criminal Appeals ruled that it was a criminal statute in *Whirlpool Corp. v. Henry*, 110 P.3d 83 (Okla. Crim. App. 2005).

⁹ House Bill 1028 passed the Committee on Public Safety and Homeland Security in the Indiana House of Representatives on January 25, 2006. House Bill 998 has been referred to the Committee on Public Safety in the Georgia House of Representatives.

¹⁰ Violence in the Workplace, 1993-99, published by the Bureau of Justice Statistics, December 2001 (NCJ 190076).

C. SECTION DIRECTORY:

Section 1. Amends s. 790.25, F.S., relating to the lawful ownership, possession, and use of firearms and other weapons.

Section 2. Amends s. 27.53, F.S., relating to the appointment of assistants and other staff by public defenders to conform a cross-reference.

Section 3. Provides that the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

While the bill does create a new felony penalty which is unranked on the offense severity chart in s. 921.0013, F.S., third degree felonies rarely result in jail or prison time. The Criminal Justice Estimating Conference routinely classifies new third degree felony penalties as having no fiscal impact or insignificant fiscal impact. See also additional fiscal comments in "D." below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any significant impact on local government revenues. See also additional fiscal comments in "D." below.

2. Expenditures:

The bill does not appear to have any impact on local governments' expenditures. While it does create a new felony penalty, third degree felonies rarely result in jail or prison time. See also additional fiscal comments in "D." below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The economic impact on the private is unclear. Employers that have policies regarding the possession of firearms in vehicles in their parking lots will no longer enjoy these policies. However, employers may enjoy greater protection from liability regarding the use of a firearm in the employer's parking lot that was lawfully stored in a vehicle. It is unknown how many employers have these policies.

D. FISCAL COMMENTS:

The bill creates a criminal penalty of a felony of the third degree. Any third degree felony conviction under the bill's provisions could result in a fine of up to \$5,000. Pursuant to s. 142.01, F.S., as of July 1, 2004, fines collected under the penal laws of the state are distributed to the Clerk of Courts of the respective county where the prosecution occurred.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

Preemption

There may be some federal laws that specifically regulate the premises of certain employers, including their parking lots. In its memorandum of law in the case challenging the Oklahoma statute, Halliburton Energy Services, Inc. argues that federal laws regulating nuclear safety,¹¹ oil and gas operations,¹² and the use of explosives,¹³ preempt the state law as it applies to the premises of these businesses.¹⁴ It has also been argued in this same case that the federal Occupational Safety and Health Act¹⁵ preempts the state statute.¹⁶ Federal law is considered to have preempted a specific area of law when Congress has shown its intent to occupy a given field. When Congress is determined to have shown such an intent, a court may strike down a state law that attempts to regulate this same field of law. A Court may find that Congress has completely preempted an area of law or it may find that the preemption is only a partial preemption and some state regulation may be allowed.

Access to Courts

The bill provides immunity for persons and entities from civil liability in lawsuits for certain actions involving the use of firearms. This provision may implicate the "access to court" protections of the Florida Constitution.¹⁷ The Florida Supreme Court has held that where a right to access the courts for redress for a particular injury predates the adoption of the access to courts provision in the 1968 state constitution, the Legislature cannot abolish the right without providing a reasonable alternative unless the Legislature can show (1) an overpowering public necessity to abolish the right and (2) no alternative method of meeting such public necessity.¹⁸ A litigant could argue that the bill denies him or her access to the courts if a cause of action existed under Florida law before the adoption of the access to courts provision in 1968. Should a court find a cause of action did not exist, the judicial inquiry would end at that point. But it is also possible that a court could hold that

¹¹ Atomic Energy Act of 1954 (42 USCA § 2011 et seq.).

¹² Pipeline Safety Act (49 USCA § 60101 et seq.).

¹³ Explosives Act (18 USCA § 841 et seq.).

¹⁴ See Brief of Halliburton Energy Services, Inc., As Amicus Curiae in Support of Plaintiff's Complaint and Plaintiff's Motion for A Permanent Injunction, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁵ 29 U.S.C. § 651, et seq.

¹⁶ See Plaintiff's Opening Memorandum in Support of Motion for a Temporary Restraining Order and/or a Preliminary Injunction on behalf of Plaintiff Whirlpool Corporation, WHIRLPOOL CORP. v. HENRY, Case No. 04CV 820H (J), United States District Court, N.D. Oklahoma.

¹⁷ Article I, section 21 of the Florida Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." See generally 10A FLA. JUR. 2D CONSTITUTIONAL LAW §§ 360-69.

¹⁸ See *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

pre-1968 Florida law would have allowed such suits under the common-law cause of action for negligence. If so, this bill might be evaluated under the *Kluger* standard.

Right to Bear Arms

The Florida Constitution¹⁹ and the U.S. Constitution²⁰ contain provisions protecting a citizen's right to bear arms. However, these provisions are not implicated without some sort of state action.²¹ The Florida Supreme Court, in interpreting Florida's constitutional provision, held that while "the Legislature may not entirely prohibit the right of the people to keep and bear arms, it can determine that certain arms or weapons may not be kept or borne by the citizen."²²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The effective date of this bill is upon becoming a law. The bill contains a new criminal penalty. Typically, when creating a criminal penalty, the public may need to be given some time to be put on notice of its creation.

The bill applies to policies or rules affecting any property that has been set aside for the parking of motor vehicles. The bill does not distinguish between commercial property or residential property. If the bill is intended to apply to commercial property only, it may need to be clarified.

The bill provides that a person or entity may not establish, maintain, or enforce a policy or rule that has the effect of prohibiting the otherwise lawful possession of a firearm that **is locked in or locked to a motor vehicle** that is on any premises set aside for the parking of motor vehicles. However, the bill provides immunity from civil liability to any person or entity for damages in certain occurrences resulting from the use of a firearm that was lawfully transported and **stored in a locked motor vehicle** on the person's or entity's property that was set aside for the parking of motor vehicles. If these provisions are to be consistent, the bill may need to be amended.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹⁹ "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law." Art. I, s. 8(a), Fla. Const.

²⁰ "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

²¹ See Validity of state gun control legislation under state constitutional provisions securing the right to bear arms, 86 A.L.R.4th 93; Constitutional right to bear arms--Federal constitution; generally-- Relationship of right to bear arms to preservation of a militia 79 Am. Jur. 2d Weapons and Firearms § 6.

²² *Rinzler v. Carson*, 262 So.2d 661, 665 (Fla. 1972).

HB 129

2006

A bill to be entitled

An act relating to lawful ownership, possession, and use of firearms and other weapons; amending s. 790.25, F.S.; prohibiting specified persons, employers, and business entities from establishing, maintaining, or enforcing any policy or rule that prohibits a person from parking a motor vehicle on property set aside for such purpose when a secured firearm or firearms are being lawfully transported and stored in the motor vehicle; providing a penalty; providing construction; providing for specified immunity from liability; providing civil remedies; defining "motor vehicle" for purposes of the act; providing intent; amending s. 27.53, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(1) DECLARATION OF POLICY.--The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including

HB 129

2006

the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) USES NOT AUTHORIZED.--

(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.22-790.24.+

2. Vagrants and other undesirable persons as defined in s. 856.02.+

3. A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing

HB 129

2006

56 themselves for military duty, or while subject to recall or
57 mobilization.+

58 (b) Citizens of this state subject to duty in the Armed
59 Forces under s. 2, Art. X of the State Constitution, under
60 chapters 250 and 251, and under federal laws, when on duty or
61 when training or preparing themselves for military duty.+

62 (c) Persons carrying out or training for emergency
63 management duties under chapter 252.+

64 (d) Sheriffs, marshals, prison or jail wardens, police
65 officers, Florida highway patrol officers, game wardens, revenue
66 officers, forest officials, special officers appointed under the
67 provisions of chapter 354, and other peace and law enforcement
68 officers and their deputies and assistants and full-time paid
69 peace officers of other states and of the Federal Government who
70 are carrying out official duties while in this state.+

71 (e) Officers or employees of the state or United States
72 duly authorized to carry a concealed weapon.+

73 (f) Guards or messengers of common carriers, express
74 companies, armored car carriers, mail carriers, banks, and other
75 financial institutions, while actually employed in and about the
76 shipment, transportation, or delivery of any money, treasure,
77 bullion, bonds, or other thing of value within this state.+

78 (g) Regularly enrolled members of any organization duly
79 authorized to purchase or receive weapons from the United States
80 or from this state, or regularly enrolled members of clubs
81 organized for target, skeet, or trap shooting, while at or going
82 to or from shooting practice; or regularly enrolled members of
83 clubs organized for modern or antique firearms collecting, while

84 such members are at or going to or from their collectors' gun
85 shows, conventions, or exhibits.†

86 (h) A person engaged in fishing, camping, or lawful
87 hunting or going to or returning from a fishing, camping, or
88 lawful hunting expedition.†

89 (i) A person engaged in the business of manufacturing,
90 repairing, or dealing in firearms, or the agent or
91 representative of any such person while engaged in the lawful
92 course of such business.†

93 (j) A person firing weapons for testing or target practice
94 under safe conditions and in a safe place not prohibited by law
95 or going to or from such place.†

96 (k) A person firing weapons in a safe and secure indoor
97 range for testing and target practice.†

98 (l) A person traveling by private conveyance when the
99 weapon is securely encased or in a public conveyance when the
100 weapon is securely encased and not in the person's manual
101 possession.†

102 (m) A person parking a motor vehicle on any property set
103 aside for the parking of a motor vehicle, whether or not such
104 property is designated as a parking lot, parking facility, or
105 parking space, when a firearm or firearms are being lawfully
106 stored and transported in the motor vehicle and the firearm or
107 firearms are locked in or locked to the motor vehicle.

108 (n)~~(m)~~ A person while carrying a pistol unloaded and in a
109 secure wrapper, concealed or otherwise, from the place of
110 purchase to his or her home or place of business or to a place
111 of repair or back to his or her home or place of business.†

HB 129

2006

112 ~~(o)-(n)~~ A person possessing arms at his or her home or
113 place of business. ~~+~~

114 ~~(p)-(e)~~ Investigators employed by the several public
115 defenders of the state, while actually carrying out official
116 duties, provided such investigators:

117 1. Are employed full time;

118 2. Meet the official training standards for firearms
119 established by the Criminal Justice Standards and Training
120 Commission as provided in s. 943.12(5) and the requirements of
121 ss. 493.6108(1)(a) and 943.13(1)-(4); and

122 3. Are individually designated by an affidavit of consent
123 signed by the employing public defender and filed with the clerk
124 of the circuit court in the county in which the employing public
125 defender resides.

126 ~~(g)-(p)~~ Investigators employed by the capital collateral
127 representative, while actually carrying out official duties,
128 provided such investigators:

129 1. Are employed full time;

130 2. Meet the official training standards for firearms as
131 established by the Criminal Justice Standards and Training
132 Commission as provided in s. 943.12(1) and the requirements of
133 ss. 493.6108(1)(a) and 943.13(1)-(4); and

134 3. Are individually designated by an affidavit of consent
135 signed by the capital collateral representative and filed with
136 the clerk of the circuit court in the county in which the
137 investigator is headquartered.

138 (4) CONSTRUCTION.--This act shall be liberally construed
139 to carry out the declaration of policy herein and in favor of

HB 129

2006

the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein contained shall be construed to authorize the carrying of a concealed firearm or other weapon on the person. This subsection shall be liberally construed in favor of the lawful use, ownership, and possession of firearms and other weapons, including lawful self-defense as provided in s. 776.012.

(6) STORAGE AND TRANSPORT OF FIREARMS IN LOCKED VEHICLE IN PARKING AREA; PENALTY; IMMUNITY FROM LIABILITY.--

(a) No person, property owner, tenant, employer, or business entity shall establish, maintain, or enforce any policy or rule that prohibits or has the effect of prohibiting any person who may lawfully possess, purchase, receive, or transfer firearms from parking a motor vehicle on any property set aside

168 for the parking of a motor vehicle, whether or not such property
169 is designated as a parking lot, parking facility, or parking
170 space, when the person is lawfully transporting and storing a
171 firearm or firearms in the motor vehicle and the firearm or
172 firearms are locked in or locked to the motor vehicle. Any
173 person, property owner, tenant, employer, or owner of a business
174 entity who violates this paragraph commits a felony of the third
175 degree, punishable as provided in s. 775.082, s. 775.083, and s.
176 775.084. This subsection shall be liberally construed in favor
177 of the lawful use, ownership, and possession of firearms and
178 other weapons, including lawful self-defense as provided in s.
179 776.012.

180 (b) No person, property owner, tenant, employer, or
181 business entity shall be liable in any civil action for any
182 occurrence which results from, is connected with, or is
183 incidental to the use of a firearm which is being lawfully
184 transported and stored in a locked motor vehicle on any property
185 set aside for the parking of motor vehicles as provided in
186 paragraph (a), unless the person, property owner, tenant,
187 employer, or owner of the business entity commits a criminal act
188 involving the use of such firearm.

189 (c)1. A person who is injured, physically or otherwise, as
190 a result of any policy or rule prohibited by paragraph (a) may
191 bring a civil action in the appropriate court against any
192 person, property owner, tenant, employer, or business entity
193 violating the provisions of paragraph (a), including an action
194 to enforce this subsection. If a plaintiff prevails in a civil
195 action related to a policy or rule prohibited by this act, the

196 court shall award actual damages, enjoin further violations of
197 this act, and award court costs and attorney's fees to the
198 prevailing plaintiff.

199 2. An employee discharged by an employer or business
200 entity for violation of a policy or rule prohibited under
201 paragraph (a), when such employee was lawfully transporting or
202 storing a firearm in a locked motor vehicle on property set
203 aside by the employer or business entity for the parking of
204 motor vehicles as provided in paragraph (a), is entitled to full
205 recovery as specified in sub-subparagraphs a.-d. In the event
206 the demand for such recovery is denied, the employee may bring a
207 civil action in the courts of this state against the employer
208 and is entitled to:

209 a. Reinstatement to the same position held at the time of
210 his or her termination from employment, or to an equivalent
211 position.

212 b. Reinstatement of the employee's full fringe benefits
213 and seniority rights, as appropriate.

214 c. Compensation, if appropriate, for lost wages, benefits,
215 or other lost remuneration caused by the termination.

216 d. Payment of reasonable attorney's fees and costs
217 incurred.

218 (d) As used in this section, "motor vehicle" means any
219 automobile, truck, minivan, sports utility vehicle, motorcycle,
220 motor scooter, or any other vehicle required to be registered
221 under Florida law.

222 (e) It is the intent of this subsection to reinforce and
223 protect the right of each law-abiding citizen to enter and exit

HB 129

2006

224 any parking lot, parking facility, or space used for the parking
225 of motor vehicles while such person is lawfully transporting and
226 storing a firearm or firearms in the motor vehicle and the
227 firearm or firearms are locked in or locked to the motor
228 vehicle, to avail himself or herself of temporary or long-term
229 parking or storage of a motor vehicle, and to prohibit any
230 infringement of the right to lawful possession of firearms when
231 such firearms are being transported and stored in a vehicle for
232 a lawful purpose.

233 Section 2. Subsection (1) of section 27.53, Florida
234 Statutes, is amended to read:

235 27.53 Appointment of assistants and other staff; method of
236 payment.--

237 (1) The public defender of each judicial circuit is
238 authorized to employ and establish, in such numbers as
239 authorized by the General Appropriations Act, assistant public
240 defenders and other staff and personnel pursuant to s. 29.006,
241 who shall be paid from funds appropriated for that purpose.
242 Notwithstanding the provisions of s. 790.01, s. 790.02, or s.
243 790.25(2)(a), an investigator employed by a public defender,
244 while actually carrying out official duties, is authorized to
245 carry concealed weapons if the investigator complies with s.
246 790.25(3) (p) ~~(e)~~. However, such investigators are not eligible
247 for membership in the Special Risk Class of the Florida
248 Retirement System. The public defenders of all judicial circuits
249 shall jointly develop a coordinated classification and pay plan
250 which shall be submitted on or before January 1 of each year to
251 the Justice Administrative Commission, the office of the

HB 129



2006

252 President of the Senate, and the office of the Speaker of the
253 House of Representatives. Such plan shall be developed in
254 accordance with policies and procedures of the Executive Office
255 of the Governor established in s. 216.181. Each assistant public
256 defender appointed by a public defender under this section shall
257 serve at the pleasure of the public defender. Each investigator
258 employed by a public defender shall have full authority to serve
259 any witness subpoena or court order issued, by any court or
260 judge within the judicial circuit served by such public
261 defender, in a criminal case in which such public defender has
262 been appointed to represent the accused.

263 . Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Court Costs for Drug Court Programs
SPONSOR(S): Quinones and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 940

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|--------|---|---|
| 1) Judiciary Committee | | Poblete  | Hogge  |
| 2) Finance & Tax Committee | | | |
| 3) Judiciary Appropriations Committee | | | |
| 4) Justice Council | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

In response to the large volume of drug crimes, increasingly overcrowded jails, and risk of federal court-imposed sanctions, Dade county officials created the first drug court in Florida in 1989. A total of 46 adult drug courts, 30 juvenile drug courts, 19 family dependency drug courts, and 2 other types, operate in 46 counties within the state, with at least one drug court in each of Florida's 20 judicial circuits. Drug courts typically extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance.

Under legislative implementation of Revision 7 to Article V of Florida's Constitution in 2003, the state agreed to use state revenues to pay "service referral, coordination, monitoring, and tracking for treatment-based drug court programs" However, the state expressly excluded state funding for "costs associated with the application of therapeutic jurisprudence principles by the courts." The Legislature also specifically prohibited county use of state revenue sources to fund drug court costs not assumed by the state.

For the purpose of funding the "operation and administration" of drug court programs within counties, this bill would authorize counties to adopt an ordinance requiring circuit and county courts to impose a \$6 court cost against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, certain specified offenses involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. This new court cost would be in addition to numerous other statutorily and judicially imposed mandatory and discretionary court costs.

Although resulting from adoption of county ordinance, the funds generated by this mandatory cost would not be administered by the county, but by the trial court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

The extent of any positive impact on state revenues depends on whether or not these revenues supplant existing revenues or are in addition to existing budgeted amounts.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

Ensures Lower Taxes: This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

B. EFFECT OF PROPOSED CHANGES:

Background

Drug Courts

Statistics show that over 60 percent of all persons arrested are either under the influence of, or have committed the crime to gain access to drugs and alcohol.¹ Substance abuse also causes or contributes to seven out of ten cases of child mistreatment and one fourth to one half of all men who commit acts of domestic violence also have substance abuse problems.²

In response to the large volume of drug crimes, increasingly overcrowded jails, and risk of federal court-imposed sanctions, Dade county officials created the first drug court in Florida in 1989.³ The focus of the Miami-Dade County Drug Court was to provide treatment for offenders. It was the first of its kind in the nation. Rather than simply sentencing offenders for short periods of incarceration or probation, the court supervised offenders by holding random drug tests, requiring frequent court appearances, imposing sanctions for continued drug use, and providing incentives to maintain sobriety.

Drug courts operate in each of Florida's 20 judicial circuits.⁴ As of February 14, 2006, a total of 46 adult drug courts, 30 juvenile drug courts, 19 family dependency drug courts, and 2 other types, operate in 46 counties within the state.⁵ They have been established in all fifty states, England, Australia, Canada, Bermuda, Puerto Rico, Guam and South America.⁶ As of that same date, 10,632 drug court clients were being served in Florida, with graduates totaling 23,566 since the first drug court was established.

Drug court programs typically provide services and monitoring in the pretrial stage. The programs extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance. Drug courts operate on a reward and punishment system. Offenders successfully completing a drug court program receive a reduced charge or possibly even dismissal of the charge. For those that fail to comply with the program, the punishment is typically jail time, plus continuation of the criminal process and possible additional jail time upon conviction.

Funding

Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs.

¹ *Id.* at 5.

² *Id.*

³ Office of the State Courts Administrator, Survey response submitted to the National Drug Court Institute, amended February 14, 2006.

⁴ See http://www.flcourts.org/gen_public/family/drug_court/map.shtml.

⁵ Report on Florida's Drug Courts, July 2004, http://www.flcourts.org/gen_public/family/bin/dcreport.pdf, accessed March 2006.

⁶ *Id.* at 8.

However, in 2003, as part of the implementation of Constitutional Revision 7 to Article V⁷ and the overall policy shift in court and court-related funding responsibilities, the Legislature redirected certain revenue sources to state use to fund state responsibilities and specifically prohibited county use of state revenue sources to fund drug court costs not assumed by the state. As part of that policy change, the state agreed to use state revenues to pay certain case management costs such as “(s)ervice referral, coordination, monitoring, and tracking for treatment-based drug court programs...,”⁸ in effect leaving it to counties to fund “costs associated with the application of therapeutic jurisprudence principles by the courts.”⁹

The Legislature has provided that a civil penalty of \$500 for persons engaged in prostitution be directed to trial court administrators to pay the administrative costs of treatment-based drug court programs.¹⁰

Court Costs

As set forth in Chapter 938, F.S., there are four categories of court costs. There are mandatory court costs in all cases, mandatory court costs in specific cases, mandatory court costs authorized by local governmental entities, and discretionary court costs in specific types of cases. In each category there are certain court costs related to drug offenses.

Of the first category—mandatory court costs applying in all cases—the different types include a:

- \$3 cost for any person convicted for violation of a state penal or criminal statute or a municipal or county ordinance;¹¹
- \$50 cost for any person pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense;¹²
- \$200 for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, \$50 for each misdemeanor or criminal traffic offense;¹³
- 5% surcharge imposed on any fine for any criminal offense by law, including a criminal traffic offense;¹⁴ and,
- \$20 surcharge on any fine prescribed by law for any criminal offense.¹⁵

In the second category—mandatory court costs in specific cases—there are two costs associated with drug offenses:

- \$135 cost for driving or boating under the influence;¹⁶ and,
- \$15 court cost for any person found guilty of any misdemeanor in which the unlawful use of drugs or alcohol is involved.¹⁷

Under the third category—mandatory costs authorized by local governmental entities—there are two such costs:

⁷ Fla. Const. art. V, s. 14.

⁸ Fla. Stat. 29.004(10)(d) (2005).

⁹ Fla. Stat. 29.004(10) (2005).

¹⁰ Fla. Stat. 796.07(6) (2005).

¹¹ Fla. Stat. 938.01 (2005).

¹² Fla. Stat. 938.03 (2005).

¹³ Fla. Stat. 938.05 (2005).

¹⁴ Fla. Stat. 938.04 (2005).

¹⁵ Fla. Stat. 938.06 (2005).

¹⁶ Fla. Stat. 938.07 (2005).

¹⁷ Fla. Stat. 938.13 (2005).

- Up to \$65 for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor or criminal traffic offense to be used only in the county in which the offense occurred;¹⁸ and,
- In counties with a teen court, a \$3 cost against each person pleading guilty or nolo contendere to or is convicted of, regardless of adjudication, a violation of a criminal law, a municipal or county ordinance, or paying a fine or civil penalty for any violation of chapter 316, F.S.¹⁹

The final type—discretionary costs—are optional with the court. There are several of relevance to drug offenses:

- An amount up to, or an amount equal to, the authorized fine for those persons convicted for driving under the influence, disorderly intoxication, open house parties, or for a violation of any section under chapter 893, F.S. (drug abuse and prevention control), chapter 562, F.S. (beverage law: enforcement), chapter 567, F.S. (liquor), or chapter 568, F.S. (intoxicating liquors in counties where prohibited);²⁰
- \$100 against any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of s. 893.13, F.S., which makes it unlawful to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver, a controlled substance;²¹ and,
- Require a convicted criminal defendant to pay the documented costs of prosecution.²²

Effect of Bill

For the purpose of funding the “operation and administration” of drug court programs within counties, this bill would authorize counties to adopt an ordinance requiring circuit and county courts to impose a \$6 court cost against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, a violation of ch. 893, F.S. (substance abuse and controlled substances); or a municipal ordinance, a county ordinance, or any provision of ch. 316, F.S. (state uniform traffic control laws), involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty.

This additional mandatory cost could not be imposed for violations of a state statute, county ordinance, or municipal ordinance relating to vehicle parking, except violations pertaining to handicapped parking.

This mandatory cost also would be in addition to any fine, civil penalty or other applicable court cost. It could not be deducted from the proceeds of that portion of any fine or civil penalty received by a county or municipality in accordance with certain provisions of the State Uniform Traffic Control laws. The clerk of the court would collect this additional mandatory cost and, on a monthly basis, deposit the funds into an account specifically designated for the operation and administration of the drug court program.

Although resulting from adoption of a county ordinance, the funds generated by this mandatory cost would not be administered by the county, but by the trial court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

C. SECTION DIRECTORY:

¹⁸ Fla. Stat. 939.185 (2005).

¹⁹ Fla. Stat. 938.19 (2005).

²⁰ Fla. Stat. 938.21 and 938.23 (2005).

²¹ Fla. Stat. 938.25 (2005).

²² Fla. Stat. 938.27 (2005).

Section 1. Creates s. 938.20 F.S., to authorize counties to require court imposition of an additional court cost to fund drug court programs administered by the trial court administrators.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a significant fiscal impact on state revenues. See D. Fiscal Comments.

2. Expenditures:

This bill does not appear to have a significant fiscal impact on state expenditures. See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Positive recurring impact, but of an indeterminate amount since the number of persons subject to this cost is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Should a county adopt an ordinance under the provisions of this bill, those persons subject to this court cost would pay an additional \$6.

D. FISCAL COMMENTS:

This bill does not indicate whether or not the revenues generated from this additional court cost would supplant existing state revenues expended on these programs or be in addition to current expenditures. The extent of any positive impact on state revenues depends on whether or not these revenues supplant existing revenues or are in addition to existing budgeted amounts. Regardless of whether or not this bill positively impacts state revenues, it will consume court cost capacity available to the state for other court funding purposes, since presumably there is some limit on the extent of court costs a defendant can be required to bear.

The total amount of revenue for drug courts generated by imposition of this mandatory cost depends on the number of persons subject to this additional court cost. No money is generated unless the county adopts the applicable ordinance. Of each \$6 mandatory cost, the drug court program would receive \$5.52 and the clerk of the court \$0.48.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable under this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

HB 709

2006

1 A bill to be entitled

2 An act relating to court costs for drug court programs;
3 creating s. 938.20, F.S.; authorizing counties to provide
4 by ordinance for funding of drug court programs through
5 the assessment of an additional mandatory court cost;
6 providing for the assessment to be imposed against persons
7 convicted of certain violations of drug abuse prevention
8 and control provisions, violations of a municipal or
9 county ordinance, or traffic violations involving alcohol
10 or other substance use or abuse and resulting in payment
11 of a fine or penalty; providing an exception; providing
12 for collection and deposit of the assessment; providing
13 for administration of the funds; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 938.20, Florida Statutes, is created to
19 read:

20 938.20 Court costs for drug court programs.--

21 (1) Notwithstanding s. 318.121, each county in which a
22 drug court program has been established under s. 397.334 may
23 require by ordinance the assessment of a mandatory cost in the
24 sum of \$6 which shall be assessed by both the circuit court and
25 the county court in the county against every person who pleads
26 guilty or nolo contendere to, or is convicted of, regardless of
27 adjudication, a violation of chapter 893, a municipal ordinance,
28 a county ordinance, or any provision of chapter 316 involving

29 the use of alcohol or other substance use or abuse which results
30 in payment of a fine or civil penalty. Any person whose
31 adjudication is withheld pursuant to s. 318.14(9) or (10) must
32 be assessed such cost. The \$6 assessment shall be in addition to
33 any fine, civil penalty, or other court cost and may not be
34 deducted from the proceeds of that portion of any fine or civil
35 penalty which is received by a municipality in the county or by
36 the county in accordance with ss. 316.660 and 318.21. The \$6
37 assessment shall specifically be added to any civil penalty paid
38 for a violation of chapter 316, whether such penalty is paid by
39 mail, paid in person without request for a hearing, or paid
40 after a hearing and determination by the court. However, the \$6
41 assessment may not be made against a person for a violation of
42 any state statute, county ordinance, or municipal ordinance
43 relating to the parking of vehicles, with the exception of a
44 violation of the handicapped parking laws.

45 (2) The clerk of the circuit court shall collect the \$6
46 assessment established pursuant to subsection (1) and shall
47 deposit the assessment monthly into an account specifically
48 designated for the operation and administration of the drug
49 court program within the county and which is under the authority
50 of the trial court administrator for the respective circuit,
51 less 8 percent, which shall be retained as fee income for the
52 office of the clerk of the circuit court, together with other
53 moneys that become available for establishing, operating, and
54 administering drug court programs under state law.

55 (3) Assessments deposited into an account specifically
56 designated for the operation and administration of the drug

HB 709

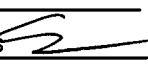
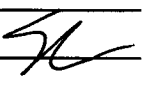
2006

court programs within such county shall be administered by the
trial court administrator for the respective circuit under the
direction of the advisory committee appointed by the chief judge
in each circuit pursuant to ss. 948.08(7) and 985.306(2).

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 839 CS Homeowners' Associations
SPONSOR(S): Kottkamp; Baxley; Davis, D.; Ross; Zapata
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2358

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------------------|---|--|
| 1) <u>Civil Justice Committee</u> | <u>5 Y, 0 N, w/CS</u> | <u>Blalock</u> | <u>Bond</u> |
| 2) <u>Judiciary Committee</u> | <u></u> | <u>Thomas</u>  | <u>Hogge</u>  |
| 3) <u>Economic Development, Trade & Banking Committee</u> | <u></u> | <u></u> | <u></u> |
| 4) <u>Justice Council</u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

A homeowners' association is a corporation responsible for the operation of a community in which voting membership is made up of parcel ownership and in which membership is mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. This bill revises the powers and duties of a homeowners' association by:

- Requiring that homeowners' associations be incorporated in the state of Florida;
- Limiting an association to only those powers and duties of the association specifically established in the governing documents;
- Decreasing the amount in controversy limit from \$100,000 to \$50,000 for when an association must get member approval to bring an action against any party in the name of the association;
- Providing that an association cannot restrict a member's freedom of association and may not limit the number of guests a member can have in a 24-hour period;
- Providing that officers and directors can be held personally liable for actions designed to harass a member; and
- Providing that a member's plans for building on his or her property cannot be denied unless they violate a specific provision of the declaration of covenants.

This bill increases the regulation of homeowners' associations and establishes conformity in the laws regulating homeowners' associations and condominium associations by:

- Revising what must be included in the associations' annual budget;
- Revising the financial reporting requirements; and
- Providing for guarantees of common expenses when they are not included in the declaration.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases regulation of homeowners' associations.

Ensure lower taxes -- This bill appears to require currently unincorporated homeowner's associations to pay the state for initial registration and for annual registration fees.

B. EFFECT OF PROPOSED CHANGES:

Background

A homeowners' association is an entity responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹ Homeowners' associations are regulated under ch. 720, F.S.

The purposes of the statutory provisions relating to homeowners' associations are to give statutory recognition to corporations that operate residential communities in Florida, to provide procedures for operating a homeowners' association, and to protect the rights of association members without unduly impairing the ability of the association to perform its functions.²

Effect of Bill

Section 720.303, F.S., regulates several aspects of a homeowners' association including the powers and duties of the homeowners' association, the homeowners' association budget, and financial reporting requirements.

Incorporation of Homeowners' Associations; Multiple Communities

Homeowner's associations were first regulated by statute in 1992 when laws regarding homeowner's associations were placed in ch. 617, F.S., which chapter regulates not for profit corporations.³ By placing the regulation in a chapter that regulates corporations, the implication was that a homeowner's association must be incorporated; however, this was not specifically required. In 1995, the regulation was amended to specifically require that an association be incorporated, and that the initial governing documents of the association be recorded in the public records.⁴ In 2000, the regulation of homeowner's associations was moved out of the chapter on not for profit corporations, and into its own chapter, ch. 720, F.S.

Currently, s. 720.303(1), F.S., provides that a homeowner's association must be operated by an association that is a Florida corporation, and provide that after October 1, 1995, the association must be incorporated and the initial governing documents of an association must be recorded in the official records of the county in which the community is located.⁵ "Governing documents" means the recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits,⁶ the articles of incorporation and bylaws of the homeowners'

¹ Section 720.301(9), F.S.

² Section 720.302(1), F.S.

³ See sections 33 through 39 of ch. 92-49, L.O.F.

⁴ See section 54 of ch. 95-274, L.O.F.

⁵ Section 720.303(1), F.S.

⁶ Section 720.303(6)(a), F.S.

association and any adopted amendments.⁷ It appears that associations created before October 1, 1995 are grandfathered in and thus are not required to be incorporated in Florida and are not required to record their governing documents in the public records. Section 720.303(1), F.S., also provides that an association may operate more than one community.

Proposed Changes:

This bill amends s. 720.303(1), F.S., by removing the language "after October 1, 1995 an association must be incorporated". This change appears to require any association created before October 1, 1995, and not required to be incorporated in Florida, to now become incorporated in Florida. This bill also requires all homeowner's associations to record their governing documents in the public records. This change should only affect those associations formed prior to October 1, 1995, and that have not already recorded their governing documents.

This bill also removes the specific provision granting homeowners' associations the authority to operate more than one community. It is unclear whether removing the language specifically allowing operation of more than one community would eliminate the ability of a homeowners' association from being able to operate more than one community. There are no provisions under current law that specifically prohibit a homeowners' association from operating more than one community. However, this change could have a significant impact on homeowners' associations if a court ruled that the legislative intent of this change was to disallow a homeowners' association from operating more than one community.

Expressed Powers and Duties of a Homeowners' Association

Section 720.303(1), F.S., provides that the powers and duties of an association include the powers and duties provided in ch. 720, F.S., except as expressly limited by ch. 720, F.S., and include the powers and duties included in the governing documents.⁸

Proposed Changes:

This bill amends s. 720.303(1), F.S., by removing the provision, "except as expressly limited or restricted in ch. 720, F.S.", and adds that the powers and duties of an association only include those "specifically" set forth in the governing documents. This change limits the powers and duties of an association to only those powers and duties provided in ch. 720, F.S. and those expressly provided in the governing documents.

This bill also amends s. 720.303(1), F.S., to provide that the officers and directors of the association may not take any action that is inconsistent with the declaration of covenants. This provision in the bill also limits the power of the association by not allowing the officers and directors of the association to take any action that is not expressly granted in the declaration of covenants.

Powers and Duties after Control of the Association is Obtained by Members

Section 720.303(1), F.S., provides that after control of the association is obtained by members other than the developer (commonly known as "turnover"), the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members.⁹

⁷ Section 720.303(6)(b), F.S.

⁸ Section 720.303(1), F.S.

⁹ Section 720.303(1), F.S.

Proposed Changes:

This bill amends s. 720.303(1), F.S., to provide that an association "may institute, maintain, or settle on appeal action in its name on behalf of the members" One reading of this change is that the phrase "on appeal" modifies all of the previous words, which would mean that an association would only be able to prosecute or defend lawsuits in the appellate stage, and not in the trial court. However, homeowners' associations that are incorporated are also governed by ch. 617, F.S., and s. 617.0302, F.S., grants powers to sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person. Therefore, incorporated homeowners' associations would not be limited in bringing or defending any causes of action due to changes made in this bill to s. 720.303(1), F.S.

Authority to Commence Litigation

Section 720.303(1), F.S., provides that before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the approval of a majority of the voting interests at a meeting at which a quorum has been attained.

Proposed Changes:

This bill decreases the applicable amount in controversy from \$100,000 to \$50,000.

Limiting an Individual Member's Statutory and Common Law Remedies

Section 720.303(1), F.S., provides that "this subsection does not limit any statutory or common law right of any individual member or class of members from bringing any action without the participation by the association".

Proposed Changes:

This bill removes this entire provision from s. 720.303(1), F.S.

Entering into Contracts

Under current law, one implied power of a homeowner's association is the power to contract for the benefit of the association and its members.

Proposed Changes:

This bill also adds language to s. 720.303(1), F.S., which specifically grants the association the power to enter into contracts for the benefit of the members of the association such as contracts for maintaining, repairing, or improving the common areas of the association.

Classes of Membership

Section 720.303(1), F.S., provides that a homeowner's association may have more than one class of members, and may issue membership certificates.

Proposed Changes:

This bill deletes the provisions regarding classes of members and the issuance of membership certificates. These provisions are already provided for in other statutes and this bill is removing the redundant language. As stated above, incorporated homeowners' associations are governed by ch. 617, F.S., and s. 617.0601, F.S., provides that a corporation may have one or more classes of members or may have no members, and a corporation may issue certificates of membership.

However, if the homeowners' association is not incorporated in Florida and if this provision is interpreted to prevent classes of memberships, then this change could have the effect of prohibiting continuing control of an association by a developer during the construction and sales phase. Also, it is unclear how this might affect a homeowners' association that has different classes of members due to the mixed nature of the association, such as where condominium units, commercial units, and townhouses and single family homes are all part of a homeowners' association that provides some common benefit to all of the members, each of whom may be in a different class because of the different levels of service provided.

Prohibited Legal Defense

This bill creates s. 720.303(1)(g), F.S., to provide that "in any action between a member and the association, it shall not be a defense by the association that the association's actions, although inconsistent with the declaration of covenants, have been uniformly applied".

Prohibiting Restrictions on Number of Guests and Freedom of Association

Proposed Changes:

This bill creates s. 720.303(1)(h), F.S., to provide that an association cannot "restrict a member's freedom of association or limit the number of guests a member can have over a 24-hour period".

Enforcing Deed Restrictions

Section 720.303(1), F.S., provides that "an association of 15 or fewer parcel owners" may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners. As more than one person may own a real estate parcel, the applicability of this provision may vary.

Proposed Changes:

This bill amends s. 720.303(1), F.S., to replace the phrase "parcel owners" with the more accurate "parcels."

Personal Liability of Officers and Directors

Proposed Changes:

This bill creates s. 720.303(1)(j), F.S., to create a cause of action against the officers and directors of the association. The bill provides that the officers and directors may be personally liable to a member if their actions "demonstrate a pattern of behavior designed harass a member of the association." There is no definition of harassment or pattern of harassment provided.

Limitations on Use of a Member's Property

Proposed Changes:

This bill creates s. 720.303(1)(k), F.S., to provide that any action of the association that is inconsistent with the declaration of covenants and which limits the use of a member's property entitles the member to compensation for the fair market value of the property being restricted. This bill appears to allow property owners to bring a form of an inverse condemnation claim against the association for limiting their use of property in a way that is inconsistent with the declaration of covenants.¹⁰

¹⁰ Inverse condemnation is court remedy for a private land owner whose interest or ownership in land has been interfered with or taken away outright by a governmental body.

Front Setback Requirements

Proposed Changes:

This bill creates s. 720.303(1)(l), F.S., to provide that in any association with more than 50 but less than 75 parcels, for the purpose of setting setbacks, any parcel of 1 acre or less must be deemed to have one front for the purpose of determining the required front setback, if any. This bill also provides that the association can enforce only setbacks specifically provided for in the declaration of covenants, and county or municipal setback provisions will apply when the covenants are silent.

Denial of a Member's Building Plans

The covenants and restrictions of a homeowner's association typically require prior approval of the association before commencing construction of a home on the parcel.

Proposed Changes:

This bill creates s. 720.303(1)(m), F.S., to provide that when a member seeks to build on his or her property, the association cannot deny or refuse to approve the member's plans for building unless the plan under consideration violates a specific provision of the declaration of covenants.

Homeowners' Association Budgets

Section 720.303(6), F.S., provides that an association must prepare an annual budget.

Proposed Change:

This bill amends s. 720.303(6), F.S., to require that the annual budget provide for the annual operating expenses.

This bill also amends 720.303(6), F.S., to provide that the annual budget must include reserve accounts for capital expenditures and deferred maintenance, in addition to annual operating expenses. This bill provides that these accounts must provide for items such as roof replacement, building painting, and pavement resurfacing, and for any other item for which the expense or cost is more than \$10,000. The amount to be reserved must be computed by using a formula estimating the remaining useful life and replacement cost or deferred maintenance expense of each reserve item. This subsection does not apply to a budget where a majority of the members of an association has voted to provide no reserves or fewer reserves required by this subsection. This bill also provides that prior to turning over control of an association to the unit owners, the developer may vote to waive or reduce the reserves for the first 2 fiscal years of the association's operation. After this time, reserves can be waived or reduced by a majority vote of all nondeveloper voting interests at an association meeting. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

Homeowners' Association Financial Reporting

Section 720.303(7), F.S., requires homeowners' associations to prepare an annual financial report within 60 days after the close of the fiscal year. The association must provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member.

Proposed Changes:

This bill amends s. 720.303(7), F.S., to increase from 60 to 90 days the time that an association has to prepare and complete an annual financial report after the close of the fiscal year. Within 21 days after the final financial report is completed by the association, but no later than 120 days after the end of the

fiscal year, the association must provide each member with a copy of the annual financial report. Homeowners' associations and condominium associations are generally operated and managed the same way, and the language used in this bill is identical in form to language contained in s. 718.111(13), F.S., regarding financial reporting for condominium associations.

This bill amends s. 720.303(7)(a), F.S., to provide that financial statements are to be completed in accordance with the accounting principles adopted by the Florida Board of Accountancy.

Transition of Homeowners' Association Control

Section 720.307, F.S., provides procedures for turning over control of an association from the developer to parcel owners. The transition of association control begins with the election of the board of directors of the homeowners' association by the members. At the time the members elect a majority of the board of directors, the developer must deliver various documents to the board.

Proposed Changes:

This bill amends s. 720.307, F.S., to include additional documents the developer must provide to the board of directors. Along with the documents that must be provided by the developer under current law, this bill requires that the developer also provide the board of directors the financial records, including the statements of the association, and source documents from the incorporation of the association through the date of turnover. This bill also provides that an independent certified public accountant must audit the records and determine that the developer was charged with, and paid, the proper amounts of assessments.

The language in this section of the bill is taken from language found in s. 718.301(4)(c), F.S., of the Condominium Act. The current law for homeowners' associations pertaining to transition of association control is very similar to the current condominium act and this bill provides conformity between the homeowners' associations and the condominium associations.

Guarantees of Common Expenses

The developer of a community is responsible for paying the costs of the common expenses of the community until the sale of the parcels to a purchaser in which time the developer pays a proportionate share of the common expenses with the parcel owners. Condominium law allows a developer to be excused from payment of common expenses if the common expenses of all unit owners are guaranteed not to increase and the developer agrees to pay all common expenses incurred but not covered by unit owner payments during the period of the guarantee.¹¹

Proposed Changes:

This bill amends s. 720.308, F.S., to incorporate the guarantees of common expenses provision found in condominium law into homeowners' association law. Currently, s. 720.308, F.S., provides for guarantees of common expenses if it is provided for in the declaration. This bill amends s. 720.308, F.S., to provide for guarantees of common expenses if a guarantee is not included in the purchase contract or declaration. This bill provides that a guarantee is effective only upon approval of a majority of the voting interests of the members other than the developer. This bill also provides that:

- The time period of a guarantee must have a specific beginning and ending date or event;
- The dollar amount of the guarantee must be an exact dollar amount for each parcel identified in the declaration;
- The cash payments required from the developer must be when the revenue collected by the association are not sufficient to provide payment for all common expenses; and,

¹¹ Section 718.116, F.S.

- The expenses incurred in the production of non-assessment revenues, not in excess of the non-assessment revenues, must not be included in the common expenses. If expenses attributable to non-assessment revenues exceed non-assessment revenues, then the developer must only fund the excess expenses.

This section of the bill mirrors what is currently contained in s. 718.116(9)(a)2, F.S., of the Condominium Act and provides conformity between condominium associations and homeowners' associations.

C. SECTION DIRECTORY:

Section 1 amends s. 720.303(1), F.S., to revise provisions related to the powers and duties of an association. This section amends s. 720.303(6), F.S., to require the annual budget of an association to set out the annual operating expenses and include reserve accounts for capital expenditures and deferred maintenance. This section amends 720.303(7), F.S., to revise the time period for when an association must prepare and complete a financial report for the preceding fiscal year.

Section 2 amends s. 720.307, F.S., to require that at the time the members are entitled to elect at least a majority of the board of directors the developer must deliver the financial records of the association.

Section 3 amends s. 720.308, F.S., to establish guarantees of common expenses if a guarantee is not included in the purchase contract or declaration.

Section 4 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill may have an unknown positive nonrecurring and recurring fiscal impact on state revenue, since this bill appears to require certain associations to be incorporated. However, there is no known means for determining the number of such associations.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to require associations created before October 1, 1995 to be incorporated in Florida, and to require all associations to record their governing documents in the public records (associations formed after October 1, 1995, should have already recorded their governing documents). The following costs are associated with these requirements:

| | |
|----------------------------------|------------------------|
| Initial filing of a corporation: | \$70.00 ¹² |
| Legal fees (estimated) | \$500.00 ¹³ |
| Annual filing of a corporation: | \$61.25 ¹⁴ |
| Estimated cost of recording: | \$256.50 ¹⁵ |

This bill requires that an accountant audit the financial records at the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association. It is unclear in the bill whether the developer or the members of the association are responsible for the cost of the audit. The cost of such an audit cannot be estimated as it would depend on the amount of time and effort required.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This bill requires that homeowners' associations, which contain between 50 and 75 parcels and are 1 acre or less, must be deemed to have one front for the purpose of determining setbacks. This provision may implicate substantive due process considerations. Substantive due process is a doctrine that "requires legislation to be fair and reasonable in content as well as application."¹⁶ Substantive due process guarantees that laws will be reasonable and not arbitrary or irrational. This provision applies to a narrow group of homeowners' associations.

This bill may also implicate the Contract Clause of the Florida Constitution. Article I, Section 10 of the Florida Constitution provides: "[n]o bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."¹⁷ "A statute contravenes the constitutional prohibition against impairment of contracts when it has the effect of rewriting antecedent contracts, that is, of changing the substantive rights of the parties to existing contracts."^{18 19}

The Supreme Court of Florida in *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774 (Fla. 1979) held that laws impairing contracts can be unconstitutional if they unreasonably and unnecessarily impair the contractual rights of citizens.²⁰ The *Pomponio* Court indicated that the

¹² Sections 617.0122(1) and 617.0122(5), F.S.

¹³ Legal fees are not required. The Secretary of State provides forms for use by the public. See

<http://www.dos.state.fl.us/doc/pdf/cr2e006.pdf>

¹⁴ Section 617.0122(17), F.S.

¹⁵ Assuming 30 pages at \$10.00 for first page and \$8.50 each for subsequent pages. See s. 28.24(12), F.S.

¹⁶ Blacks Law Dictionary, 1429 (8th ed. 2004)

¹⁷ Article 1, Section 10(1) of the U.S. Constitution provides: "No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts"

¹⁸ 10a Fla. Jur. s. 414, Constitutional Law.

¹⁹ The term impair is defined as "to make worse; to diminish in quantity, value, excellence, or strength; or to lessen in power or weaken." 10a Fla. Jur. s. 414, Constitutional Law.

²⁰ The Florida Supreme Court has adopted the method of analysis from the United States Supreme Court in cases involving the contract clause. *Pomponio*, 378 So. 2d at 780.

"well-accepted" principle in this state is that virtually no degree of contract impairment is tolerable in this state." *Pomponio*, 378 So. 2d at 780. When seeking to determine what level of impairment is constitutionally permissible, a court "must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy." *Id.*

In other words, "[t]his method requires a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power." *U.S. Fidelity and Guar. Co. v. Department of Ins.*, 453 So. 2d 1355, 1360-61 (1984). What should be reviewed when considering this balancing test?

[T]he United States Supreme Court recently outlined the main factors to be considered in applying this balancing test. The threshold inquiry is whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected. Total destruction of contractual expectations is not necessary for a finding of substantial impairment. On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. The Court long ago observed: One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation such as the remedying of a broad and general social or economic problem. Furthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. One legitimate state interest is the elimination of unforeseen windfall profits. The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests. Once a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption. Unless the State itself is a contracting party, as is customary in reviewing economic and social regulation, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

U.S. Fidelity and Guar. Co., 453 So.2d at 1360-61 (Fla. 1984) (internal citations and quotations omitted).

The changes in this bill apply to existing associations.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill provides that the powers and duties of an association only include those set forth in ch. 720, F.S., and those specifically set forth in the governing documents. By only granting powers and duties expressly provided in the governing documents this bill appears to require the drafters of governing documents to try to provide for each circumstance that might arise where the association might need to act. If some circumstance arose, where an association needed to act, but the power to act or the duty

to act was not specifically provided for and set forth in ch. 720, F.S., then the association could only act if the association is able to convince the membership to amend the covenants.

This bill entitles owners to be compensated for the fair market value when the association limits the use of their property by enforcing a restriction not provided for in the declaration of covenants. An issue that could possibly arise pertaining to this provision is whether an association will be required to compensate a member whose use of property is temporarily limited by an association action. In addition, it is unclear under this bill what kind of association actions would constitute "limiting" the use of a member's property. Furthermore, it is unclear how this provision is applicable under current law. Under current law, a homeowners' association cannot limit the use of a parcel owner's property if the association is not granted this power in the declaration of covenants.

This bill requires that homeowners' associations set up reserve accounts. However, like all other regulation of homeowner's associations, there is currently no government entity to enforce or oversee this requirement. It is unclear whether a property owner who has moved out of the homeowners' association would be liable for inadequately funding past reserves if an association that has not implemented this provision is later forced to provide funds for reserve accounts.

It is unclear how the provision in s.720.303(1), F.S., will be applied where the declaration of covenants conflict with applicable federal, state and local laws.

In the to-be-created s. 720.303(1)(l), F.S., it is unclear whether the second clause regarding enforcement of setbacks applies to all associations or just those of between 50 and 75 parcels.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Civil Justice Committee adopted one amendment to this bill. The amendment revises s. 720.308, F.S., by adding titles and rearranging the paragraphs and sub-paragraphs in order to clarify the bill. The bill was then reported favorably with a committee substitute.

HB 839

2006
CS

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to homeowners' associations; amending s.
7 720.303, F.S.; revising the powers and duties of
8 homeowners' associations; requiring certain associations
9 to be incorporated in this state; removing a provision
10 authorizing associations to operate more than one
11 community; prohibiting officers and directors from taking
12 any action that is inconsistent with the declaration of
13 covenants; authorizing associations to settle actions on
14 appeal; revising procedures relating to legal actions
15 commenced by the association; lowering the dollar amount
16 for which the association must obtain approval by the
17 members of the association before proceeding with the
18 legal action; authorizing the association to enter into
19 certain contracts; removing provisions authorizing an
20 association to have more than one class of members and to
21 issue membership certificates; prohibiting certain
22 association defenses; prohibiting associations from
23 restricting a member's freedom of association and from

Page 1 of 15

CODING: Words stricken are deletions; words underlined are additions.

hb0839-01-c1

HB 839

2006
CS

limiting the number of guests a member may have within a 24-hour period; providing that officers and directors of an association may be personally liable for damages under certain circumstances; providing compensation for certain members under certain circumstances; providing criteria for establishing setback limits; prohibiting the association from denying or refusing to approve a member's plans for building on the member's property under certain circumstances; requiring the budget to provide for annual operating expenses; requiring the budget to include reserve accounts for capital expenditures and deferred maintenance; providing the amount to be reserved; authorizing the association to adjust replacement reserve assessments annually; authorizing the developer to vote to waive the reserves or reduce the funding of reserves for a certain period; revising provisions relating to financial reporting; revising time periods in which the association must complete its reporting; amending s. 720.307, F.S.; requiring developers to deliver financial records to the board; requiring certain information to be included in the records and for the records to be prepared in a specified manner; amending s. 720.308, F.S.; providing that a guarantee of common expenses shall be effective under certain circumstances; requiring the guarantee to meet certain requirements; authorizing the guarantee to provide certain requirements; requiring the stated dollar amount of the guarantee to be an exact dollar amount for each parcel identified in the declaration; providing payments

HB 839

2006
CS

52 required from the guarantor to be determined in a certain
53 manner; providing a formula to determine the guarantor's
54 total financial obligation to the association; providing
55 that certain expenses incurred in the production of
56 certain revenues shall not be included in the common
57 expenses; providing an effective date.

58
59 Be It Enacted by the Legislature of the State of Florida:

60
61 Section 1. Subsections (1), (6), and (7) of section
62 720.303, Florida Statutes, are amended to read:

63 720.303 Association powers and duties; meetings of board;
64 official records; budgets; financial reporting; association
65 funds; recalls.--

66 (1) POWERS AND DUTIES.--

67 (a) An association which operates a community as defined
68 in s. 720.301, must be incorporated in this state, ~~operated by~~
69 ~~an association that is a Florida corporation. After October 1,~~
70 ~~1995, the association must be incorporated and the initial~~
71 governing documents must be recorded in the official records of
72 the county in which the community is located. ~~An association may~~
73 ~~operate more than one community.~~

74 (b) The officers and directors of an association have a
75 fiduciary relationship to the members of ~~who are served by~~ the
76 association.

77 (c) The powers and duties of an association include those
78 set forth in this chapter and, ~~except as expressly limited or~~
79 ~~restricted in this chapter~~, those specifically set forth in the

Page 3 of 15

CODING: Words stricken are deletions; words underlined are additions.

hb0839-01-c1

HB 839

2006
CS

governing documents. The officers and directors of the
association may not take any action that is inconsistent with
the declaration of covenants.

(d) After control of the association is obtained by
members from the developers ~~other than the developer~~, the
association may institute, maintain, or settle on, ~~or~~ appeal
actions ~~or hearings~~ in its name on behalf of the ~~all~~ members
concerning matters of common interest to the members, ~~including,~~
~~but not limited to, the common areas, roof or structural~~
~~components of a building, or other improvements for which the~~
~~association is responsible; mechanical, electrical, or plumbing~~
~~elements serving an improvement or building for which the~~
~~association is responsible; representations of the developer~~
~~pertaining to any existing or proposed commonly used facility,~~
~~and protesting ad valorem taxes on commonly used facilities. The~~
~~association may defend actions in eminent domain or bring~~
~~inverse condemnation actions. Before commencing any legal action~~
~~litigation against any party in the name of the association~~
~~involving amounts in controversy in excess of \$50,000 \$100,000,~~
the association must obtain the affirmative approval of a
majority of the members of the association ~~voting interests~~ at a
meeting of the association ~~membership~~ at which a quorum is
present ~~has been attained.~~

(e) The association may enter into contracts for the
benefit of the members of the association, including, but not
limited to, contracts for maintaining, repairing, or improving
the common areas of the association. ~~This subsection does not~~
~~limit any statutory or common law right of any individual member~~

HB 839

2006
CS

108 ~~or class of members to bring any action without participation by~~
109 ~~the association.~~

110 (f) A member does not have the authority to act for the
111 association by virtue of being a member of the association. An
112 ~~association may have more than one class of members and may~~
113 ~~issue membership certificates.~~

114 (g) In any action between a member and the association, it
115 shall not be a defense by the association that the association's
116 actions, although inconsistent with the declaration of
117 covenants, have been uniformly applied.

118 (h) An association may not restrict a member's freedom of
119 association and may not limit the number of guests a member may
120 have within a 24-hour period.

121 (i) An association of 15 or fewer parcels ~~parcel owners~~
122 ~~may enforce only the requirements of those deed restrictions~~
123 ~~established prior to the purchase of each parcel upon an~~
124 ~~affected parcel owner or owners.~~

125 (j) The officers and directors of an association may be
126 personally liable for damages to a member if the actions of the
127 officers and directors demonstrate a pattern of behavior
128 designed to harass a member of the association.

129 (k) Any action of the association by and through the
130 officers and directors that limits the legal use of any portion
131 of a member's property which is inconsistent with the
132 declaration of covenants shall entitle the member to
133 compensation for the fair market value of that portion of the
134 member's property the use of which is being restricted.

HB 839

2006
CS

(1) In any association with more than 50 but fewer than 75 parcels, for purposes of establishing setback limits, any parcel of 1 acre or less shall be deemed to have one front for purposes of determining the required front setback, if any. Only those setbacks specifically set forth in the declaration of covenants may be enforced by the association. Where the covenants are silent, the applicable county or municipal setbacks shall apply.

(m) The association may not deny or refuse to approve a member's plans for building on the member's property unless the plan under consideration violates a specific provision of the declaration of covenants.

(6) BUDGETS.--

(a) The association shall prepare an annual budget providing for the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance

HB 839

2006
CS

163 expense or replacement cost, and any other item for which the
164 deferred maintenance expense or replacement cost exceeds
165 \$10,000. The amount to be reserved shall be computed by means of
166 a formula that is based upon estimated remaining useful life and
167 estimated replacement cost or deferred maintenance expense of
168 each reserve item. The association may adjust replacement
169 reserve assessments annually to take into account any changes in
170 estimates or extension of the useful life of a reserve item
171 caused by deferred maintenance. This paragraph does not apply to
172 an adopted budget for which the members of an association have
173 determined, by a majority vote at a duly called meeting of the
174 association, to provide no reserves or fewer reserves than
175 required by this paragraph. However, prior to turnover of
176 control of an association by a developer to unit owners, the
177 developer may vote to waive the reserves or reduce the funding
178 of reserves for the first 2 fiscal years of the association's
179 operation, beginning with the fiscal year in which the initial
180 declaration is recorded, after which time reserves may be waived
181 or reduced only upon the vote of a majority of all nondeveloper
182 voting interests voting in person or by limited proxy at a duly
183 called meeting of the association. If a meeting of the unit
184 owners has been called to determine whether to waive or reduce
185 the funding of reserves and no such result is achieved or a
186 quorum is not attained, the reserves as included in the budget
187 shall go into effect. After the turnover, the developer may vote
188 its voting interest to waive or reduce the funding of reserves.

189 (7) FINANCIAL REPORTING.--Within 90 days after the end of
190 the fiscal year, or annually on the date provided in the bylaws,

HB 839

2006
CS

191 the association shall prepare and complete, or contract for the
192 preparation and completion of, a an annual financial report for
193 the preceding fiscal year. Within 21 60 days after the final
194 financial report is completed by the association or received
195 from the third party, but not later than 120 days after the end
196 of the fiscal year or other date as provided in the bylaws,
197 ~~close of the fiseal year.~~ the association shall, within the time
198 limits set forth in subsection (5), provide each member with a
199 copy of the annual financial report or a written notice that a
200 copy of the financial report is available upon request at no
201 charge to the member. Financial reports shall be prepared as
202 follows:

203 (a) An association that meets the criteria of this
204 paragraph shall prepare or cause to be prepared a complete set
205 of financial statements in accordance with generally accepted
206 accounting principles as adopted by the Board of Accountancy.
207 The financial statements shall be based upon the association's
208 total annual revenues, as follows:

209 1. ~~An association with total annual revenues of \$100,000~~
210 ~~or more, but less than \$200,000, shall prepare compiled~~
211 ~~financial statements.~~

212 2. An association with total annual revenues of at least
213 \$200,000, but less than \$400,000, shall prepare reviewed
214 financial statements.

215 3. An association with total annual revenues of \$400,000
216 or more shall prepare audited financial statements.

HB 839

2006
CS

217 (b)1. An association with total annual revenues of less
218 than \$100,000 shall prepare a report of cash receipts and
219 expenditures.

220 2. An association in a community of fewer than 50 parcels,
221 regardless of the association's annual revenues, may prepare a
222 report of cash receipts and expenditures in lieu of financial
223 statements required by paragraph (a) unless the governing
224 documents provide otherwise.

225 3. A report of cash receipts and disbursement must
226 disclose the amount of receipts by accounts and receipt
227 classifications and the amount of expenses by accounts and
228 expense classifications, including, but not limited to, the
229 following, as applicable: costs for security, professional, and
230 management fees and expenses; taxes; costs for recreation
231 facilities; expenses for refuse collection and utility services;
232 expenses for lawn care; costs for building maintenance and
233 repair; insurance costs; administration and salary expenses; and
234 reserves if maintained by the association.

235 (c) ~~If 20 percent of the parcel owners petition the board~~
236 ~~for a level of financial reporting higher than that required by~~
237 ~~this section, the association shall duly notice and hold a~~
238 ~~meeting of members within 30 days of receipt of the petition for~~
239 ~~the purpose of voting on raising the level of reporting for that~~
240 ~~fiscal year. Upon approval of a majority of the total voting~~
241 ~~interests of the parcel owners, the association shall prepare or~~
242 ~~cause to be prepared, shall amend the budget or adopt a special~~
243 ~~assessment to pay for the financial report regardless of any~~
244 ~~provision to the contrary in the governing documents, and shall~~

Page 9 of 15

CODING: Words stricken are deletions; words underlined are additions.

hb0839-01-c1

HB 839

2006
CS

provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 2. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:

720.307 Transition of association control in a community.--With respect to homeowners' associations:

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense,

HB 839

2006
CS

within no more than 90 days deliver the following documents to the board:

(t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine whether expenditures were for association purposes and the billings, cash receipts, and related records to determine whether the developer was charged and paid the proper amounts of assessments.

Section 3. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.--

(1) ASSESSMENTS.--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share

HB 839

2006
CS

of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

(2) GUARANTEE OF COMMON EXPENSES.--

(a) Establishment of a guarantee.--If a guarantee is not included in the purchase contracts, declaration, or prospectus, any agreement establishing a guarantee shall only be effective either upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association or by agreement in writing without a meeting if provided in the bylaws. Such guarantee shall meet the requirements of this section.

(b) Guarantee period.--The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

HB 839

2006
CS

328 1. The ending date or event shall be the same for all of
329 the members of a homeowners' association, including members in
330 different phases of homeowners' associations.

331 2. The guarantee may provide for different intervals of
332 time during a guarantee period with different dollar amounts for
333 each such interval.

334 (c) Guarantee extension.--The guarantee may provide that
335 after the initial stated period the developer has an option to
336 extend the guarantee for one or more additional stated periods.
337 The extension of a guarantee is limited to extending the ending
338 date or event; therefore, the developer does not have the option
339 of changing the level of assessments guaranteed.

340 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
341 amount of the guarantee shall be an exact dollar amount for each
342 parcel identified in the declaration. Regardless of the stated
343 dollar amount of the guarantee, assessments charged to a member
344 shall not exceed the maximum obligation of the member based on
345 the total amount of the adopted budget and the member's
346 proportionate ownership share of the common elements.

347 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash
348 payments required from the guarantor during the guarantee period
349 shall be determined as follows:

350 (a) If at any time during the guarantee period the funds
351 collected from member assessments at the guaranteed level and
352 other revenues collected by the association are not sufficient
353 to provide payment, on a timely basis, of all common expenses,
354 including the full funding of the reserves unless properly

HB 839

2006
CS

355 waived, the guarantor shall advance sufficient cash to the
356 association at the time such payments are due.

357 (b) Expenses incurred in the production of nonassessment
358 revenues, not in excess of the nonassessment revenues, shall not
359 be included in the common expenses. If the expenses attributable
360 to nonassessment revenues exceed nonassessment revenues, only
361 the excess expenses must be funded by the guarantor. For
362 example, if the association operates a rental program in which
363 rental expenses exceed rental revenues, the guarantor shall fund
364 the rental expenses in excess of the rental revenues. Interest
365 earned on the investment of association funds may be used to pay
366 the income tax expense incurred as a result of the investment,
367 such expense shall not be charged to the guarantor, and the net
368 investment income shall be retained by the association. Each
369 such nonassessment-revenue-generating activity shall be
370 considered separately. Capital contributions collected from
371 members are not revenues and shall not be used to pay common
372 expenses.

373 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
374 guarantor's total financial obligation to the association at the
375 end of the guarantee period shall be determined on the accrual
376 basis using the following formula: the guarantor shall fund the
377 total common expenses incurred during the guarantee period,
378 including the full funding of the reserves unless properly
379 waived, less the total regular periodic assessments earned by
380 the association from the members other than the guarantor during
381 the guarantee period, regardless of whether the actual level
382 charged was less than the maximum guaranteed amount.

HB 839

2006
CS

(6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the common expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. For example, if the association operates a rental program in which rental expenses exceed rental revenues, the guarantor shall fund the rental expenses in excess of the rental revenues. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Capital contributions collected from members are not revenues and shall not be used to pay common expenses.

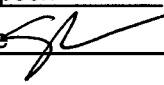
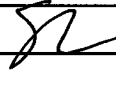
Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1049 CS Driver's Licenses

SPONSOR(S): Traviesa and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1322

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|------------------------|--|--|
| 1) <u>Transportation Committee</u> | <u>13 Y, 2 N, w/CS</u> | <u>Thompson</u> | <u>Miller</u> |
| 2) <u>Judiciary Committee</u> | <u></u> | <u>Hogge</u>  | <u>Hogge</u>  |
| 3) <u>Transportation & Economic Development Appropriations Committee</u> | <u></u> | <u></u> | <u></u> |
| 4) <u>State Infrastructure Council</u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

HB 1049 w/CS requires the court to order the Department of Highway Safety and Motor Vehicles (DHSMV) to withhold the issuance of, or suspend or revoke the driver's license of any person who sells, gives, or serves alcoholic beverages to persons under age 21. The bill exempts alcoholic beverage licensees and employees or agents of a licensee who violate this provision, because they are already regulated under chapter 561 Florida Statutes, relating to alcohol, beverages and tobacco.

The bill provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than 3 months or more than 6 months for the first violation and one year for any subsequent violation. The bill also provides that the court may order the DHSMV to issue a driver's license restricted to business or employment purposes.

The bill would take effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government— HB 1049 w/CS provides for an additional penalty of a mandatory loss of driver's license between 3 and 6 months for a first offense and 1 year for subsequent violations for adults 21 years or older who knowingly provide alcohol to minors.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 322, F.S., relates to the administration of driver's licenses by the DHSMV. Section 322.28, F.S., sets forth the provisions related to suspension or revocation of driver's licenses. A driver's license may be suspended or revoked for various traffic safety related reasons, such as for having a certain number of points for speeding violations or for driving under the influence. A license can also be suspended or revoked for numerous reasons that are not directly related to operating a motor vehicle. Examples include: nonpayment of a criminal case financial obligation, s. 322.245, F.S.; noncompliance with paternity proceeding orders, s. 61.13016, F.S.; not meeting school attendance requirements, ss. 322.091 and 1003.27, F.S.; and passing worthless checks, ss. 322.251 and 832.09, F.S. In addition, a minor's license can be suspended for possession of an alcoholic beverage, ss. 397.251(2)(i) and 562.111(3), F.S.

Section 322.271, F.S., provides that the DHSMV may, in certain circumstances, issue a driver's license restricted to business or employment purposes only to a person who is otherwise qualified for a license and whose license has been suspended or revoked.

Section 562.11(1)(a), F.S., provides that it is unlawful to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume alcoholic beverages on a licensed premises. Anyone convicted of a violation of these provisions is guilty of a criminal misdemeanor of the second degree, punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500.

Proposed Changes

HB 1049 w/CS provides for an additional penalty of a mandatory loss of driver's license for adults 21 years or older who knowingly provide alcohol to minors. The bill amends s. 562.11, F.S., and creates s. 322.057, F.S., to require the court to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates prohibition in s. 562.11(1), F.S., involving sales to underage persons. The bill exempts alcoholic beverage licensees and employees or agents of a licensee who violate this provision, because they are already regulated under chapters 561 Florida Statutes, relating to alcohol, beverages and tobacco.

The bill would allow the driver's license of such a person providing alcohol to minors to be suspended or revoked for 3 to 6 months for a first offense and for 1 year for subsequent violations. The bill also provides that the court may order DHSMV to issue a business or employment only restricted license to the person whose license is suspended or revoked.

C. SECTION DIRECTORY:

Section 1. Amends s. 562.11, F.S., providing for withholding of the issuance of, or suspension or revocation of the driver's license or driving privilege of any person other than a chapter 561, F.S., licensee, who provides alcoholic beverages to a person under the age of 21.

Section 2. Amends s. 322.057, F.S., requiring a court to order the DHSMV to withhold the issuance of, or suspend or revoke, the driver's license of persons providing alcoholic beverages to persons under the age of 21; providing that licensees under chapter 561 or an employee or agent of such licensee is exempt from this provision; allowing hardship licenses to be issued to persons in violation of this provision and otherwise qualified for a license.

Section 3. Provides that the bill takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the DHSMV, this bill may generate additional revenue as a result of reinstating driving privileges of persons suspended or revoked pursuant to this bill. However, the number of individuals to be suspended and the amount of revenue to be collected is indeterminate. DHSMV also believes this will require programming modifications to driver license software systems that will be absorbed as part of the normal workload.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On **March 14, 2006** the Transportation Committee amended HB 1049 to make minor grammatical corrections. The committee then voted 13-2 to report the bill favorably with committee substitute.

HB 1049

2006
CS

CHAMBER ACTION

The Transportation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to driver's licenses; amending s. 562.11, F.S.; providing an additional penalty for providing alcoholic beverages to a person under the age of 21; creating s. 322.057, F.S.; requiring a court to order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license of certain persons who provide alcoholic beverages to persons under the age of 21; providing for exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.--

HB 1049

2006
CS

24 (1)(a)1. It is unlawful for any person to sell, give,
25 serve, or permit to be served alcoholic beverages to a person
26 under 21 years of age or to permit a person under 21 years of
27 age to consume such beverages on the licensed premises. A person
28 who violates this subparagraph commits ~~Anyone convicted of~~
29 ~~violation of the provisions hereof is guilty of~~ a misdemeanor of
30 the second degree, punishable as provided in s. 775.082 or s.
31 775.083.

32 2. In addition to any other penalty imposed for a
33 violation of subparagraph 1., the court shall order the
34 Department of Highway Safety and Motor Vehicles to withhold the
35 issuance of, or suspend or revoke, the driver's license or
36 driving privilege, as provided in s. 322.057, of any person
37 other than a licensee or an employee or agent of a licensee who
38 violates subparagraph 1.

39 Section 2. Section 322.057, Florida Statutes, is created
40 to read:

41 322.057 Mandatory revocation or suspension of driver's
42 license for certain persons who provide alcohol to persons under
43 21 years of age.--

44 (1) Notwithstanding s. 322.28, the court shall order the
45 department to withhold the issuance of, or suspend or revoke,
46 the driver's license of a person 21 years of age or older, other
47 than a licensee under chapter 561 or an employee or agent of
48 such licensee, who is found guilty of a violation of s.
49 562.11(1)(a) for not less than 3 months or more than 6 months
50 for a violation and 1 year for any subsequent violation.

HB 1049

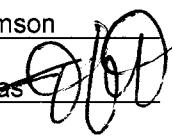
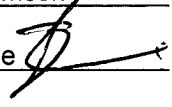
2006
CS

51 (2) The court may direct the department to issue a
52 driver's license restricted to business or employment purposes
53 only, as provided in s. 322.271, to a person who is otherwise
54 qualified for a license.

55 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7047 PCB GO 06-20 OGSR Tobacco Settlement Agreement
SPONSOR(S): Governmental Operations Committee, Rivera
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1530

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|----------|--|---|
| Orig. Comm.: Governmental Operations Committee | 6 Y, 0 N | Williamson | Williamson |
| 1) Judiciary Committee | | Thomas  | Hogge  |
| 2) State Administration Council | | | |
| 3) _____ | | | |
| 4) _____ | | | |
| 5) _____ | | | |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for proprietary confidential business information used to calculate the annual tobacco settlement payments. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

In February 1995, the State of Florida filed suit against a number of tobacco manufacturers asserting various claims for monetary and injunctive relief.¹ On March 3, 1996, the State of Florida, as one of five settling states,² settled all of its claims against Liggett Group, Inc., Brooke Group, Ltd., and Liggett & Myers, Inc. In August 1997, the "Big Four" tobacco companies (Phillip Morris, Inc., R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corp., and Lorillard Tobacco Company) entered into a \$368.5 billion tobacco settlement agreement with Florida for all past, present, and future claims by the state, including reimbursement of Medicaid expenses, fraud, RICO,³ and punitive damages. Current law defines these settlements to mean the settlement, as amended, in the case of *State v. American Tobacco Co. et al.*, No. 95-1466AH (Fla. 15th Cir. Ct. 1996).⁴

The settling tobacco companies must make settlement payments to Florida in perpetuity.⁵ The annual tobacco settlement payments are based on several factors that include the total volume of U.S. cigarette sales, each company's share of the national market, net operating profits, and consumer price indices. Statutory guidelines were established to govern the expenditure of the tobacco settlement proceeds.⁶

In 2000, the Legislature established the Task Force on Tobacco-Settlement Revenue Protection to determine the need for, and to evaluate methods for, protecting the state's settlement revenue from significant loss.⁷ The task force recommended that the Legislature provide a process for verifying that the tobacco settlement payments received are in accordance with the Florida Settlement Agreement. The report further recommended that the Legislature provide a public records exemption for information considered necessary to verify the accuracy of the payments made by the tobacco companies if such information is a trade secret or insider information.⁸

As a result, the Legislature enacted a public records exemption for information used to calculate the annual tobacco-settlement payments.⁹ Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for

¹ The lawsuit included as defendants the American Tobacco Company, R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Company, Philip Morris, Inc., Liggett Group, Inc. Brooke Group, Ltd., Lorillard Company, British American Tobacco Co., Ltd., and Dosal Tobacco Corp, Inc.

² The five states that entered into the settlement agreement are West Virginia, Florida, Mississippi, Massachusetts, and Louisiana.

³ "Florida Racketeer Influenced and Corrupt Organization Act" in ss. 895.01-895.06, F.S.

⁴ See ss. 215.56005(1)(f) and 569.215, F.S.

⁵ From the date of the settlement, Florida was to receive \$11.3 billion over the next 25 years and an additional \$1.7 billion over the next five years because of a most favored nation clause in the settlement agreement, as amended. Florida negotiated a "Most Favored Nations" clause in the settlement, which provides the state with additional monies for a period, after Minnesota settled with the defendants on terms more favorable than Florida's.

⁶ See s. 569.21, F.S.

⁷ See ch. 2000-128, L.O.F.

⁸ Senate Staff Analysis and Economic Impact Statement for SPB 7066, prepared by the Regulated Industries Committee, January 17, 2006, at 4.

⁹ Chapter 2001-136, L.O.F.; codified in s. 569.215, F.S.

settlement payments pursuant to the tobacco settlement agreement is confidential and exempt¹⁰ from public records requirements. Furthermore, such information received by the Chief Financial Officer or the Auditor General for verifying annual settlement payments, is confidential and exempt.

Proprietary confidential business information means information that:

- Is owned or controlled by a tobacco company that is a signatory to the settlement agreement;
- Is intended to be and is treated by a tobacco company as private in that the disclosure of the information would cause harm to the company's business operations; and
- Has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.¹¹

Such information includes:

- Trade secrets.
- Information in a Form 10-K that is confidential pursuant to an order of the Division of Corporation Finance of the Securities and Exchange Commission.
- Internal auditing control policies and procedures and reports of internal auditors.
- Financial operating and marketing information that, if disclosed, could impair the competitive business interests of the provider.
- Financial statements.¹²
- Report letters from independent auditors relating to domestic operating company income.
- Analyses of specific items of revenue and expense included in operating profit and extraordinary items.¹³
- Working papers,¹⁴ schedules,¹⁵ analyses, and reconciliations¹⁶ prepared by company personnel for the purpose of clarifying the disclosures of domestic tobacco revenues and operating profit contained in financial statements or other information related to the sale or production of tobacco products.

Pursuant to the Open Government Sunset Review Act,¹⁷ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It clarifies that the exemption applies to trade secrets as defined in s. 688.002, F.S., of the Uniform Trade Secrets Act.¹⁸ The current exemption does not provide a definition for trade secrets. Finally, the bill makes editorial changes.

¹⁰ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹¹ Section 569.215(2), F.S.

¹² Financial statements consist of balance sheets, statements of income and cash flows, and notes related thereto, of any subsidiary that is part of a consolidated group and engaged in the production or sale of tobacco products. Section 569.215(2)(e), F.S.

¹³ Extraordinary items consist of one-time tobacco litigation settlement costs and restructuring charges. Section 569.215(2)(g), F.S.

¹⁴ According to tobacco company and agency responses to staff questionnaires, working papers are evidentiary materials used by accountants and auditors to document particular entries as debits/credits or income/expense. These documents include invoices, purchase orders, policies, and memoranda.

¹⁵ According to tobacco company and agency responses to staff questionnaires, a schedule is an attachment to working papers, analysis, and reconciliations. A schedule also has been described as a list of accounting entries, such as expense items.

¹⁶ According to tobacco company and agency responses to staff questionnaires, reconciliation is a comparison between two accounting documents, sets of information, or conclusions that were derived using different procedures.

¹⁷ Section 119.15, F.S.

¹⁸ Chapter 688, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 569.215, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

HB 7047

2006

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act regarding the tobacco settlement agreement; amending s. 569.215, F.S., which provides an exemption from public records requirements for proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the settlement agreement in the case of State of Florida et al. v. American Tobacco Company et al., or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement; clarifying the definition of "trade secrets" for purposes of the exemption; making editorial changes; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 569.215, Florida Statutes, is amended to read:

569.215 Confidential records relating to tobacco settlement agreement.--

(1) Proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the settlement agreement, as amended, in

HB 7047

2006

the case of State of Florida et al. v. American Tobacco Company et al., No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Chief Financial Officer or the Auditor General for any purpose relating to verifying settlement payments made pursuant to the settlement agreement is confidential and exempt from the ~~provisions of~~ s. 119.07(1) and s. 24(a) of Art. I of the State Constitution. Any state or federal agency that is authorized to have access to such documents by any provision of law shall be granted such access in furtherance of such agency's statutory duties, notwithstanding the provisions of this section. Proprietary confidential business information received under this section shall not retain its confidential and exempt status if that information is made public, including publicizing such information in a Securities and Exchange Commission filing, an annual financial statement, or other document or means. ~~This exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(2) As used in this section, the term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by a tobacco company that is a signatory to the settlement agreement, as amended, in the case of State of Florida et al. v. American Tobacco Company et al., No. 95-1466AH, in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, is intended to be and is treated by a tobacco company as private in

HB 7047

2006

57 | that the disclosure of the information would cause harm to the
58 | company's business operations, and has not been disclosed unless
59 | disclosed pursuant to a statutory provision, an order of a court
60 | or administrative body, or private agreement that provides that
61 | the information will not be released to the public. The term
62 | includes, but is not limited to:

63 | (a) Trade secrets as defined in s. 688.002.

64 | (b) Information in a Form 10-K that is confidential
65 | pursuant to an order of the Division of Corporation Finance of
66 | the Securities and Exchange Commission.

67 | (c) Internal auditing control policies and procedures and
68 | reports of internal auditors.

69 | (d) Financial operating and marketing information prepared
70 | in the ordinary course of business, the disclosure of which
71 | could impair the competitive business of the provider of
72 | information.

73 | (e) Financial statements, which consist of balance sheets,
74 | statements of income and cash flows, and notes related thereto,
75 | of any subsidiary that is part of a consolidated group and
76 | engaged in the production or sale of tobacco products.

77 | (f) Report letters from independent auditors relating to
78 | domestic operating company income.

79 | (g) Analyses of specific items of revenue and expense
80 | included in operating profit and extraordinary items. As used in
81 | this paragraph, the term "extraordinary items" consists of one-
82 | time tobacco litigation settlement costs and restructuring
83 | charges.

HB 7047

2006

84 (h) Working papers, schedules, analyses, and
85 reconciliations prepared by company personnel for the purpose of
86 clarifying the disclosures of domestic tobacco revenues and
87 operating profit contained in financial statements or other
88 information related to the sale or production of tobacco
89 products.

90 Section 2. This act shall take effect October 1, 2006.

Workshop on the legal framework and liability considerations concerning offshore petroleum/natural gas activities.

- ***PowerPoint Presentation:*** Overview of Pending Federal Offshore Oil and Gas Leasing Proposals, By Richard Charter, Co-Chair, National OCS Coalition
- ***PowerPoint Presentation:*** Oil Spills, Ocean Currents, and the U.S. Minerals Management Services, By Professor Wilton Sturges, Department of Oceanography, Florida State University

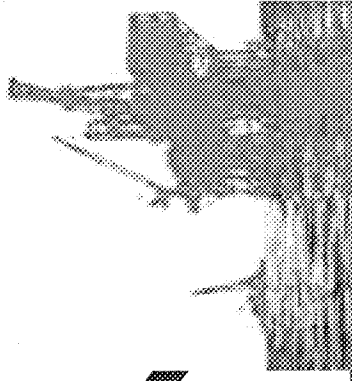
Overview of Pending Federal Offshore Oil and Gas Leasing Proposals

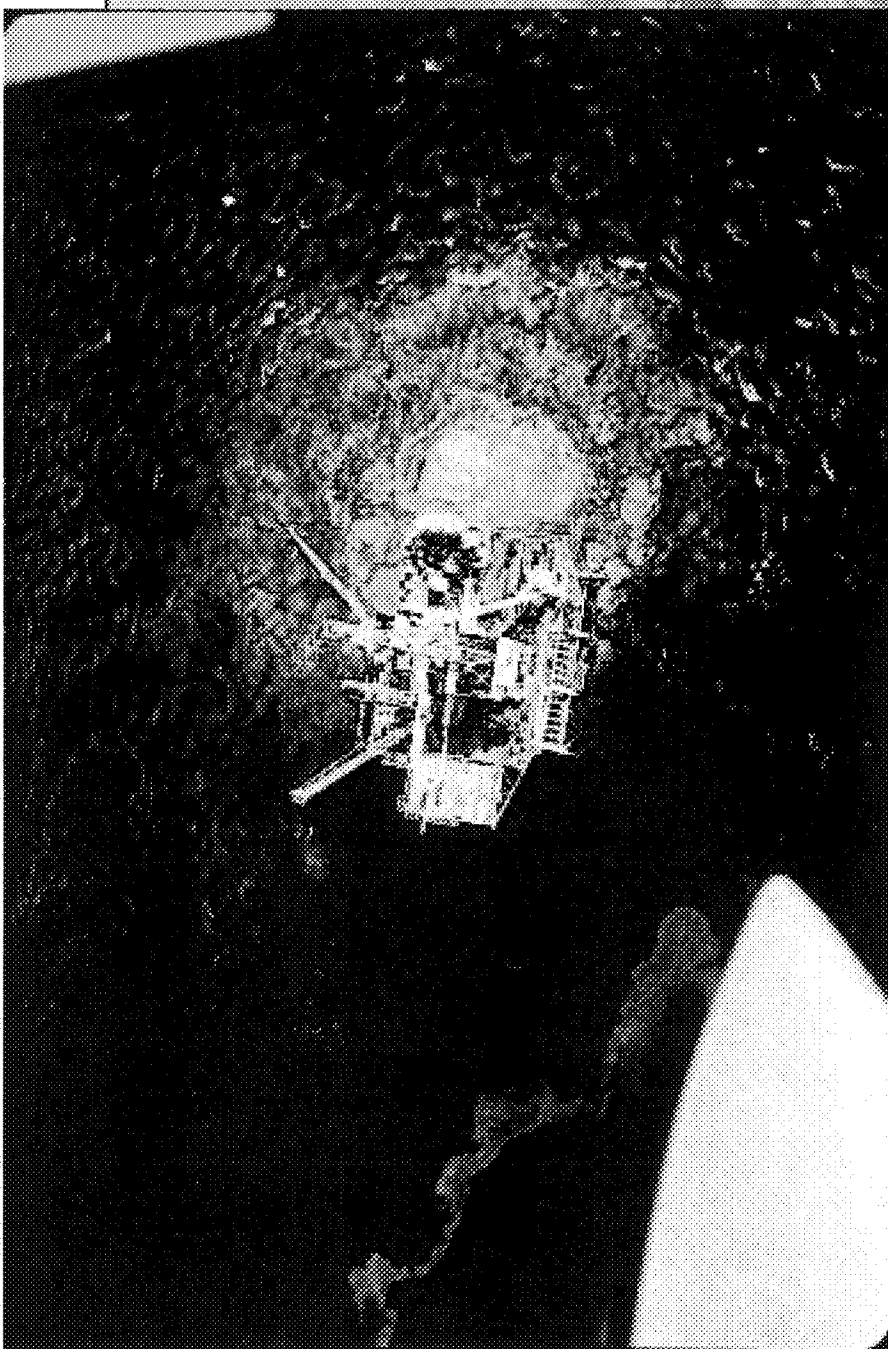
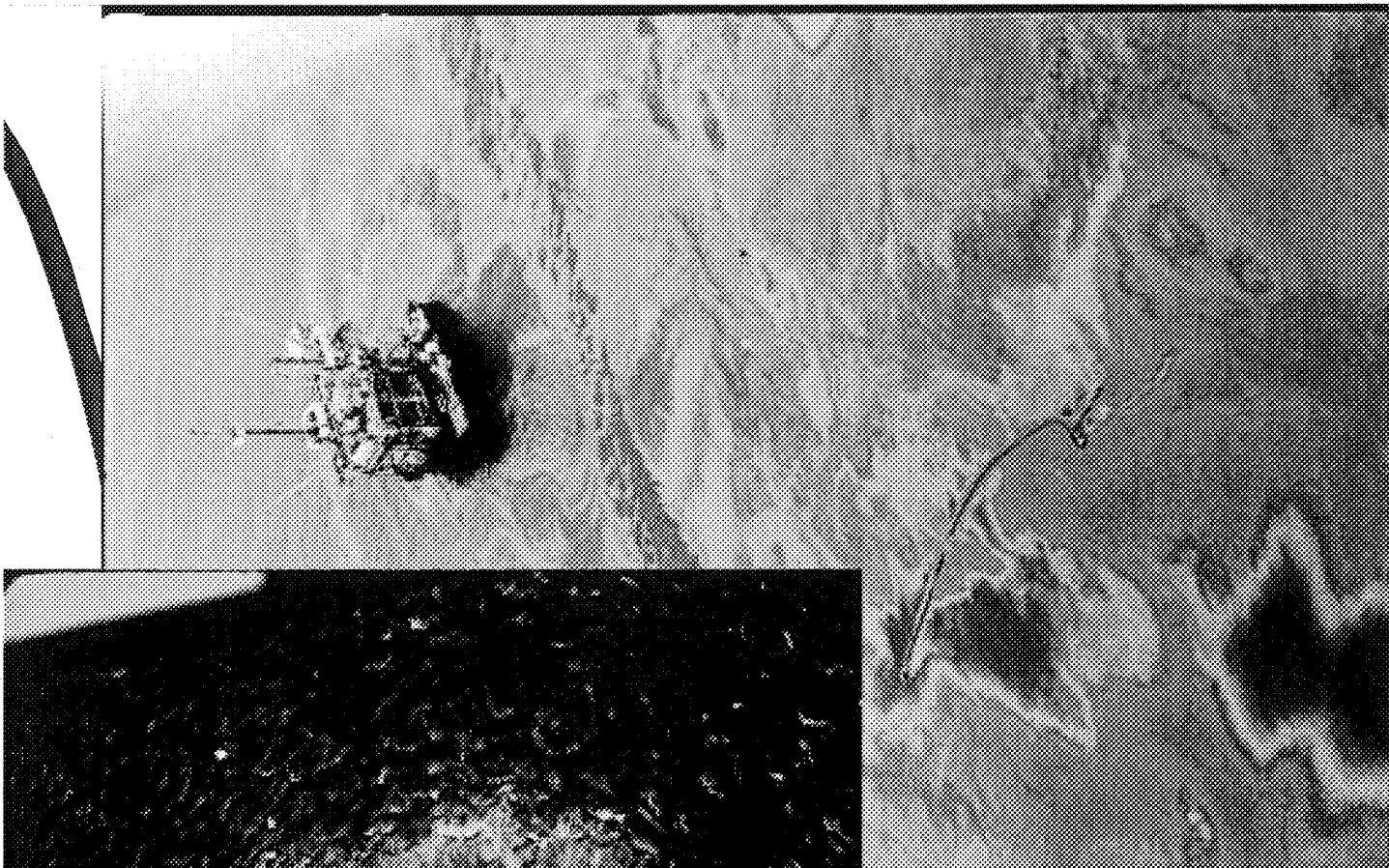
***Prepared by Richard Charter
Co-Chair, National OCS Coalition***

waterway@monitor.net

March 22, 2006

teleconference





Definitions

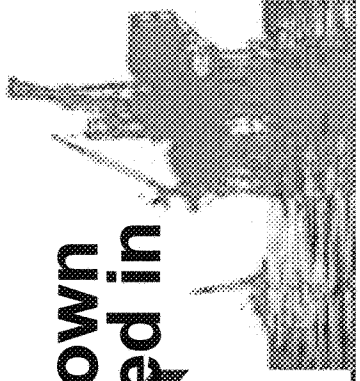
OCS: Outer Continental Shelf (that portion of the coast extending out under the sea, into US federal waters).

OCSLAA: Outer Continental Shelf Lands Act Amendments (current US law).

CZMA: Coastal Zone Management Act.

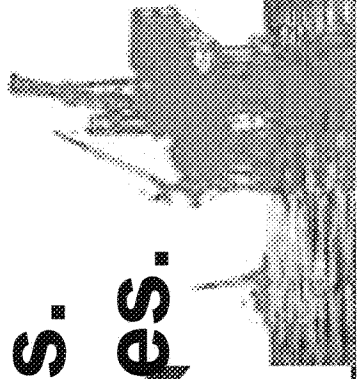
Legislative OCS Moratorium: renewed by Congress each year since fiscal year 1982.

Presidential OCS Withdrawals: also known as "Bush OCS Deferrals", first enacted in 1991, later extended until 2012.



Current Protections on Outer Continental Shelf:

- 1. Annual Congressional OCS Moratorium until Oct. 1, 2006.**
- 2. Presidential OCS Deferrals until 2012.**
- 3. National Marine Sanctuaries.**
- 4. OCSLAA Exclusionary Zones.**



Legislative OCS Moratorium

- Began in 1981, as part of FY 1982 Department of the Interior Appropriations Bill, initially for California and Massachusetts only.
- Renewed annually with bipartisan cooperation.
- Included in Bush budget for FY 2007.
- Markup in House Subcommittee/early May.
- Bans OCS “leasing, pre-leasing, and related activities”.



Presidential

OCS

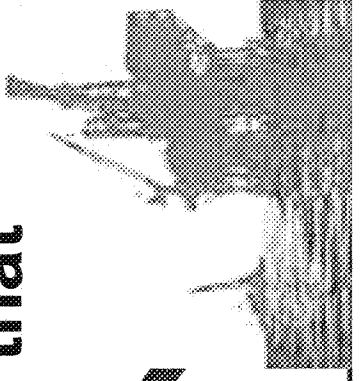
Deferrals/Withdrawals

- 1990: Former President George Bush Sr. impanels National Research Council of Nat'l Academy of Sciences to study OCS leasing.



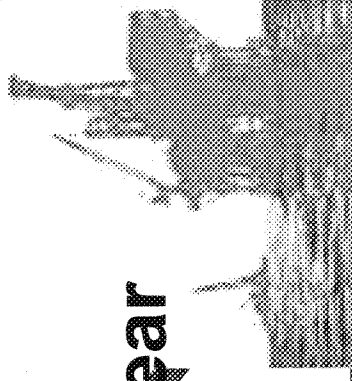
Presidential OCS Deferrals

- **1991: National Research Council, after one year of studies, determines that scientific data is inadequate to permit OCS leasing within moratorium areas and ensure that the environment will be protected.**



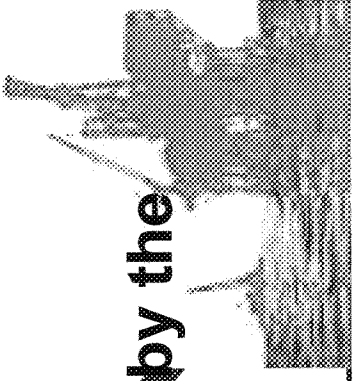
Presidential OCS Deferrals

- 1991: President Bush, Sr., issues order pursuant to OCS Lands Act, that no OCS leasing will occur within moratorium areas until after 2002.
- 1998: President Clinton extends this administrative order until after the year 2012, adds Bristol Bay.

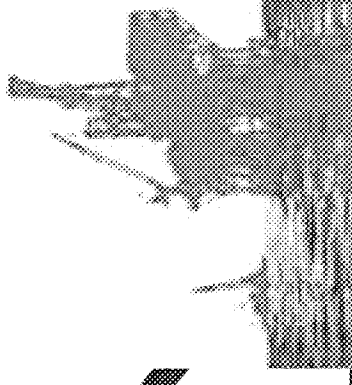


Coastal Zone Management Act (CZMA)

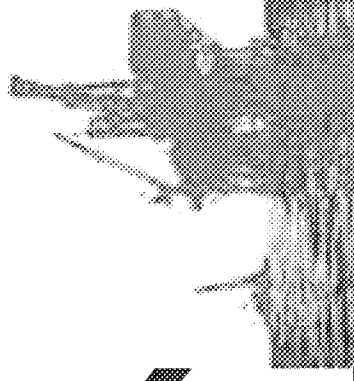
- Federal or federally-sponsored activities in federal waters must be found to be “consistent” to the “*maximum extent practicable*” with the land and water uses of the state’s federally-approved Coastal Zone Management Plan (CZMP). State makes a “consistency determination”, but final decision is made by the Secretary of Commerce.

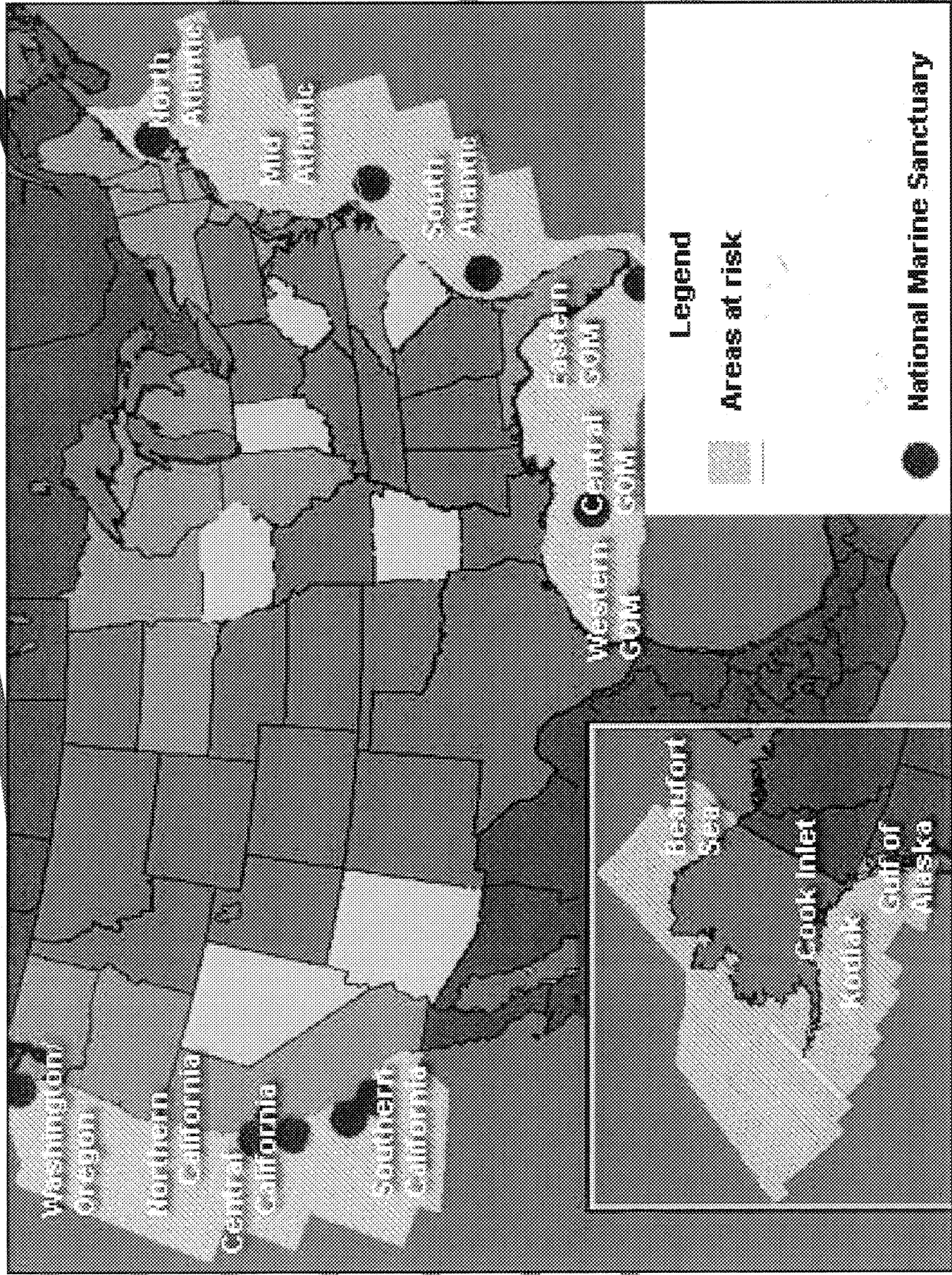


OCS Lands Act Exclusionary Zones

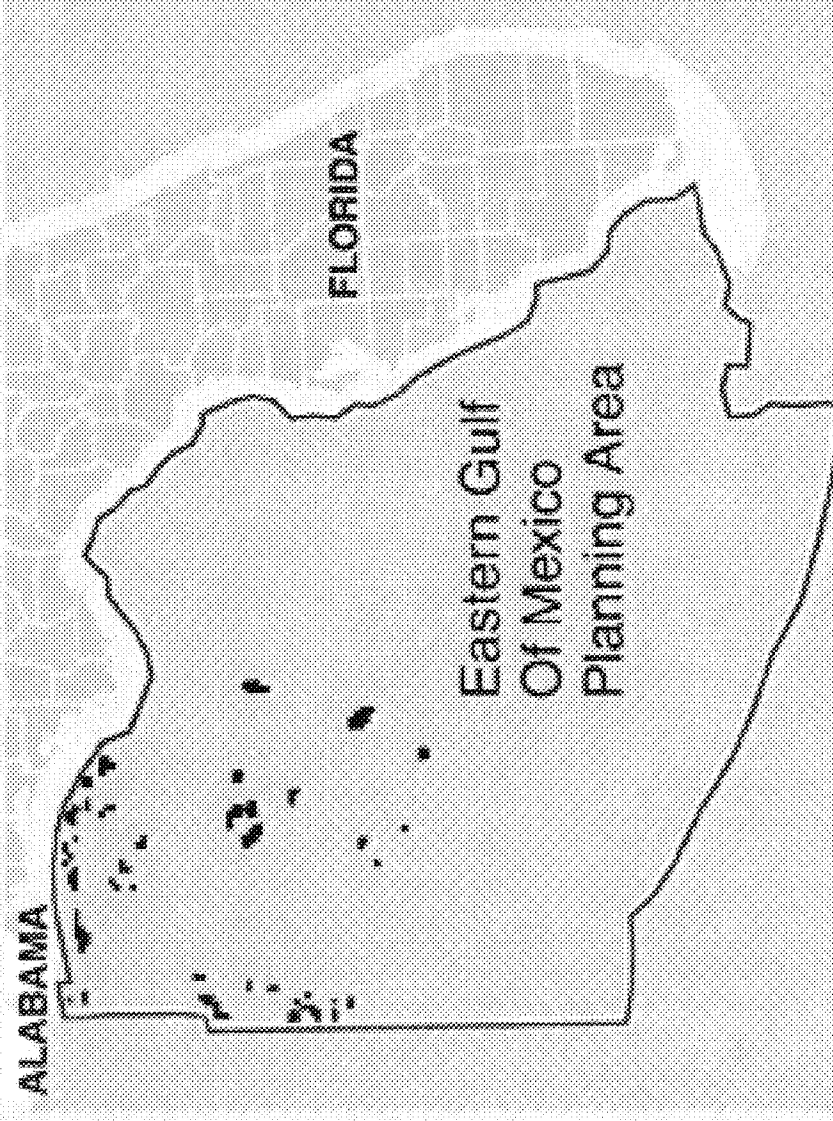


National Marine Sanctuaries





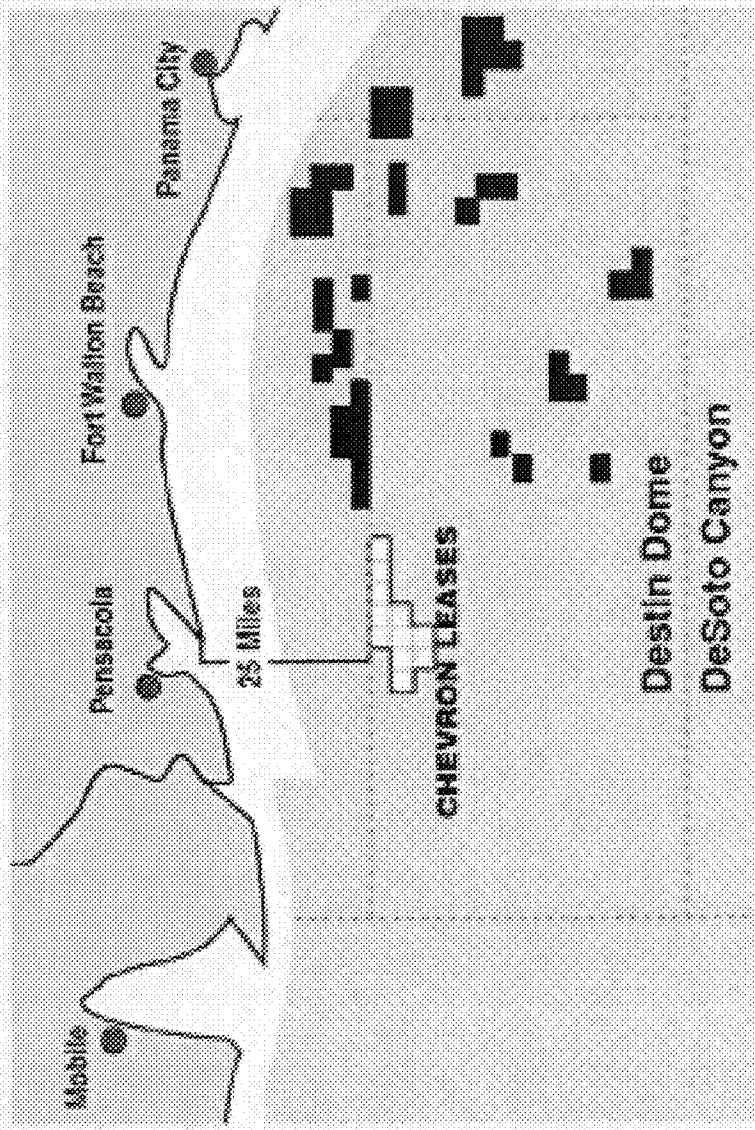
Active Oil And Gas Leases





- ☐ Federal Waters
- ☐ State Waters
- Planning Area Boundary
- Active Leases



Chevron—First To Propose Production Drilling On Off-Shore Lease



 Chevron Leases In Destin Dome, Unit 56

 Other Active Leases (not yet in use)

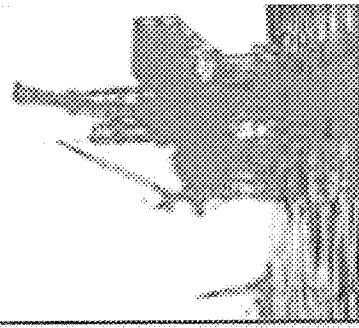
 Federal Waters

 State Waters

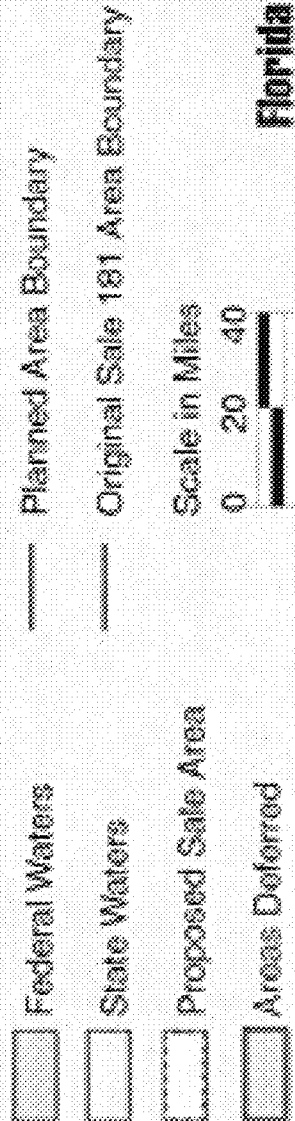
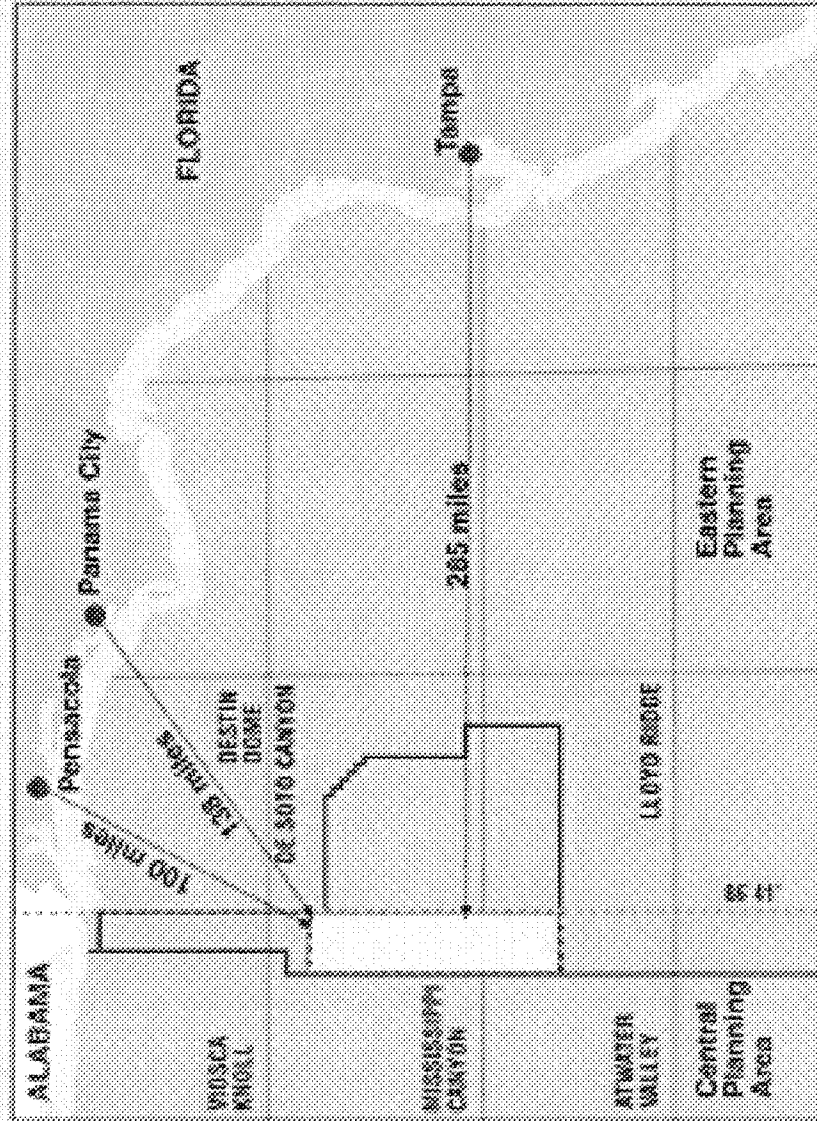
 Planning Area Boundaries

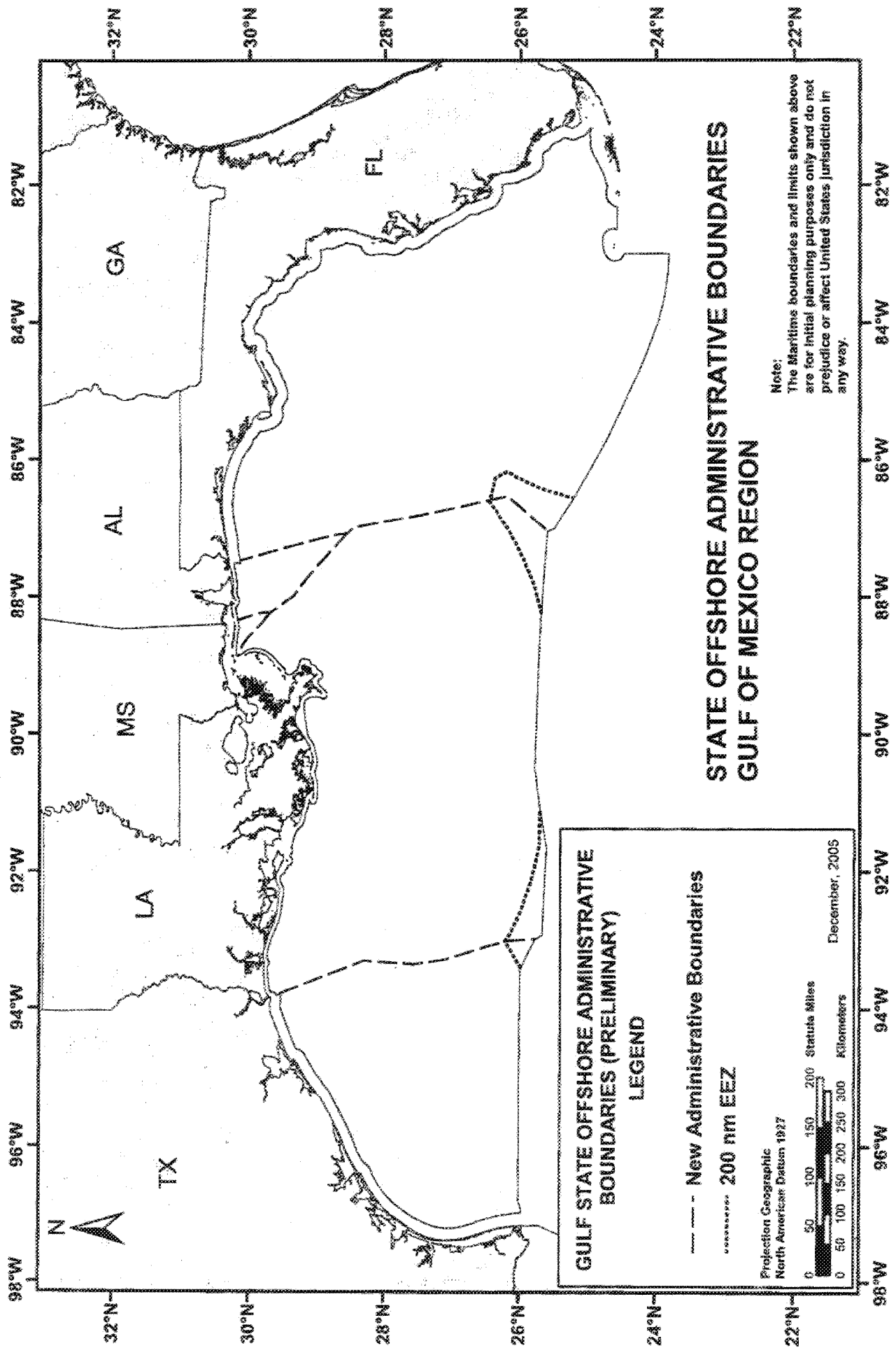
Scale in Miles
0 20

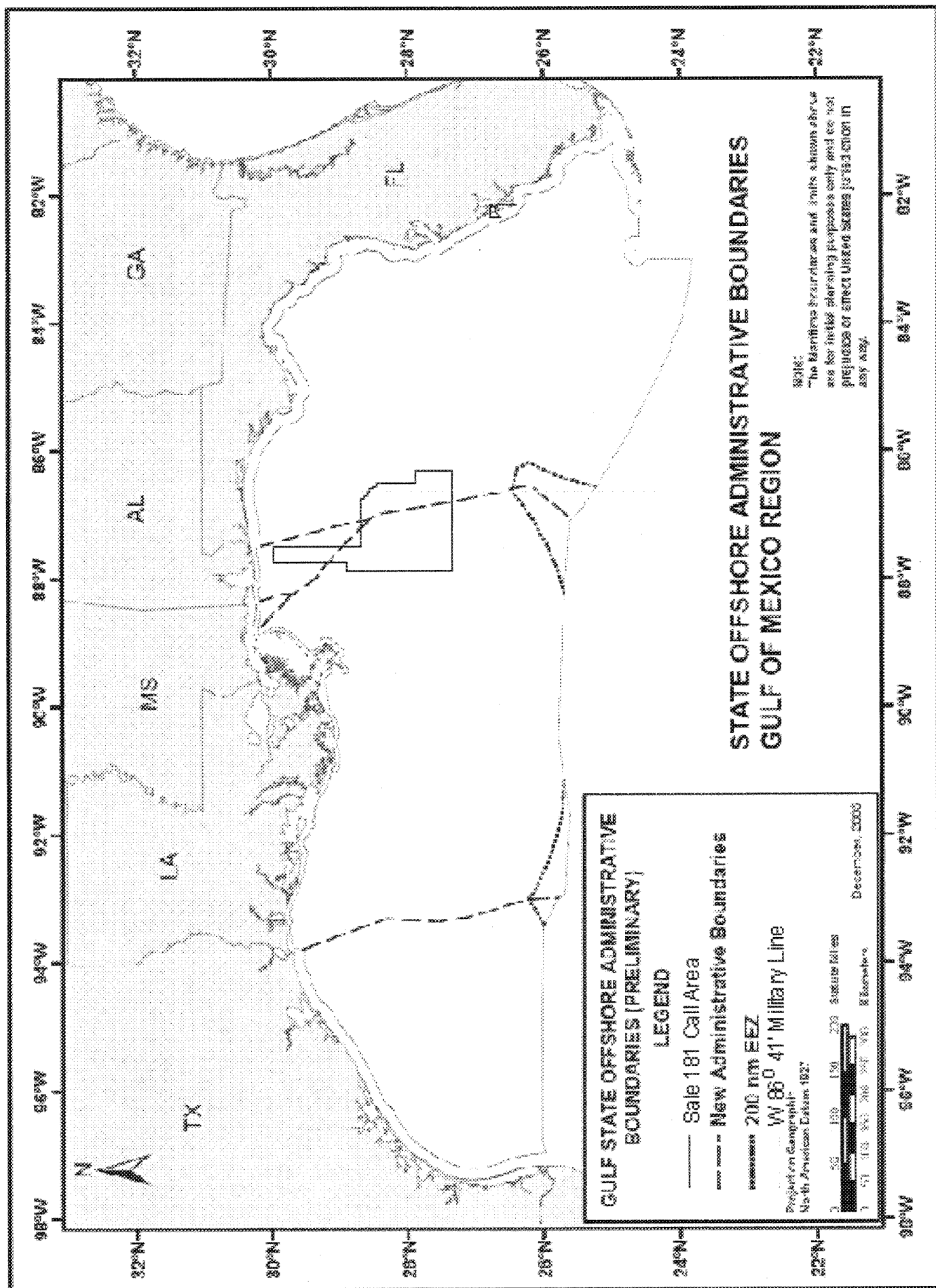
Florida PIRG
www.floridapirg.org



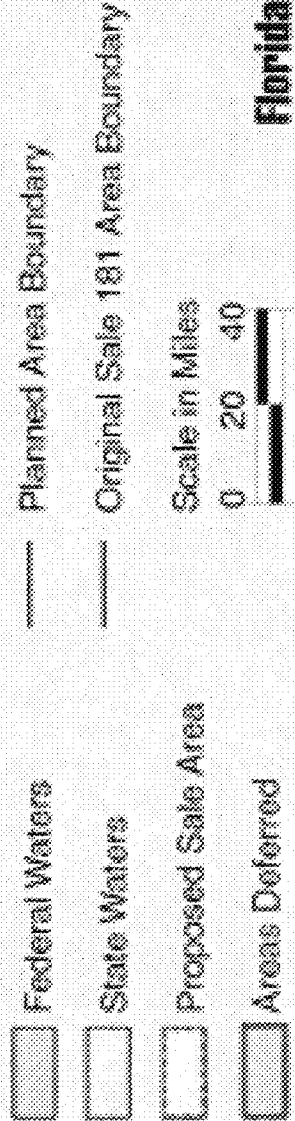
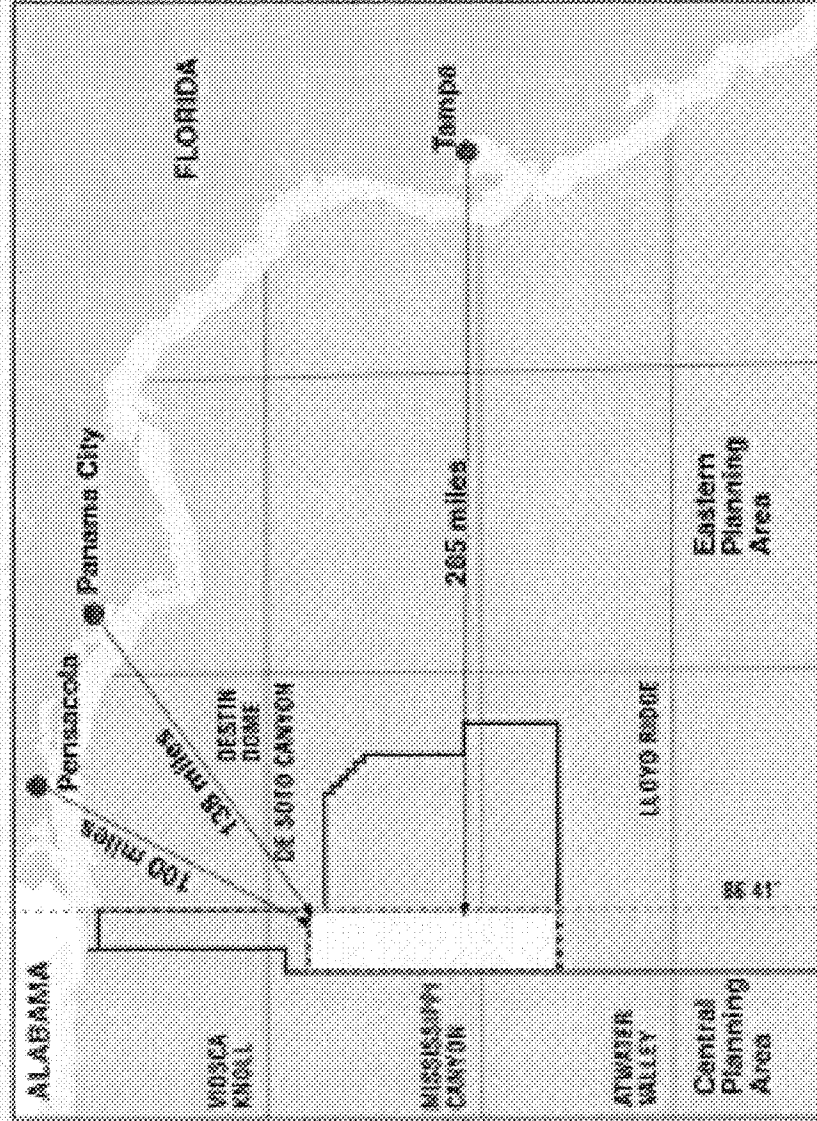
New Leasing In The Eastern Gulf Of Mexico







New Leasing In The Eastern Gulf Of Mexico



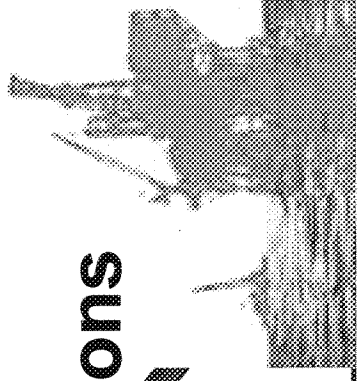
“Omnibus Energy bill of 2005”

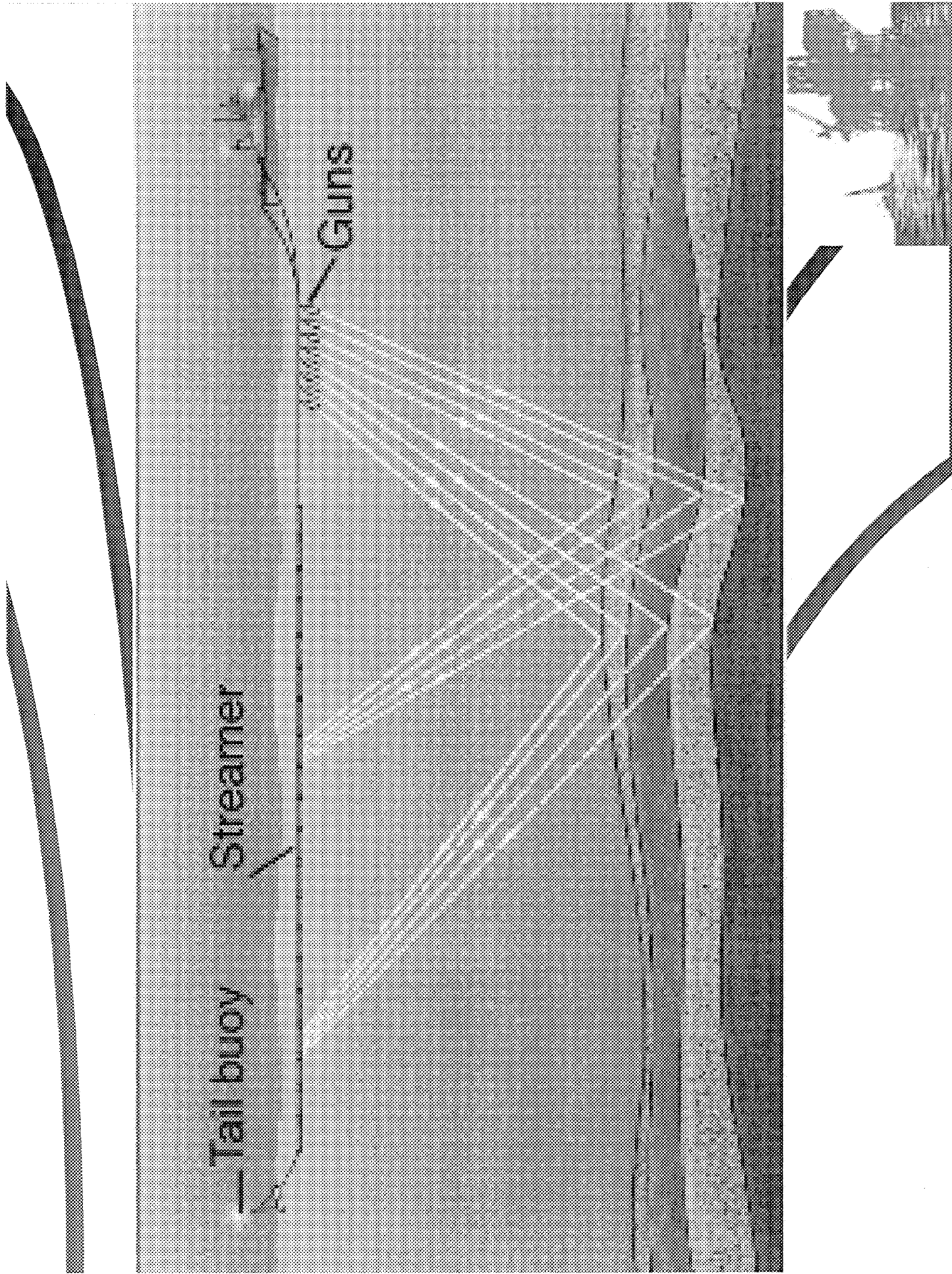
- Requires “OCS Inventory” in all US waters, including congressional moratorium and Presidential Withdrawal areas, using “any available technology”, except drilling.
- Dart cores, seismic surveys, geochemical sniffers.



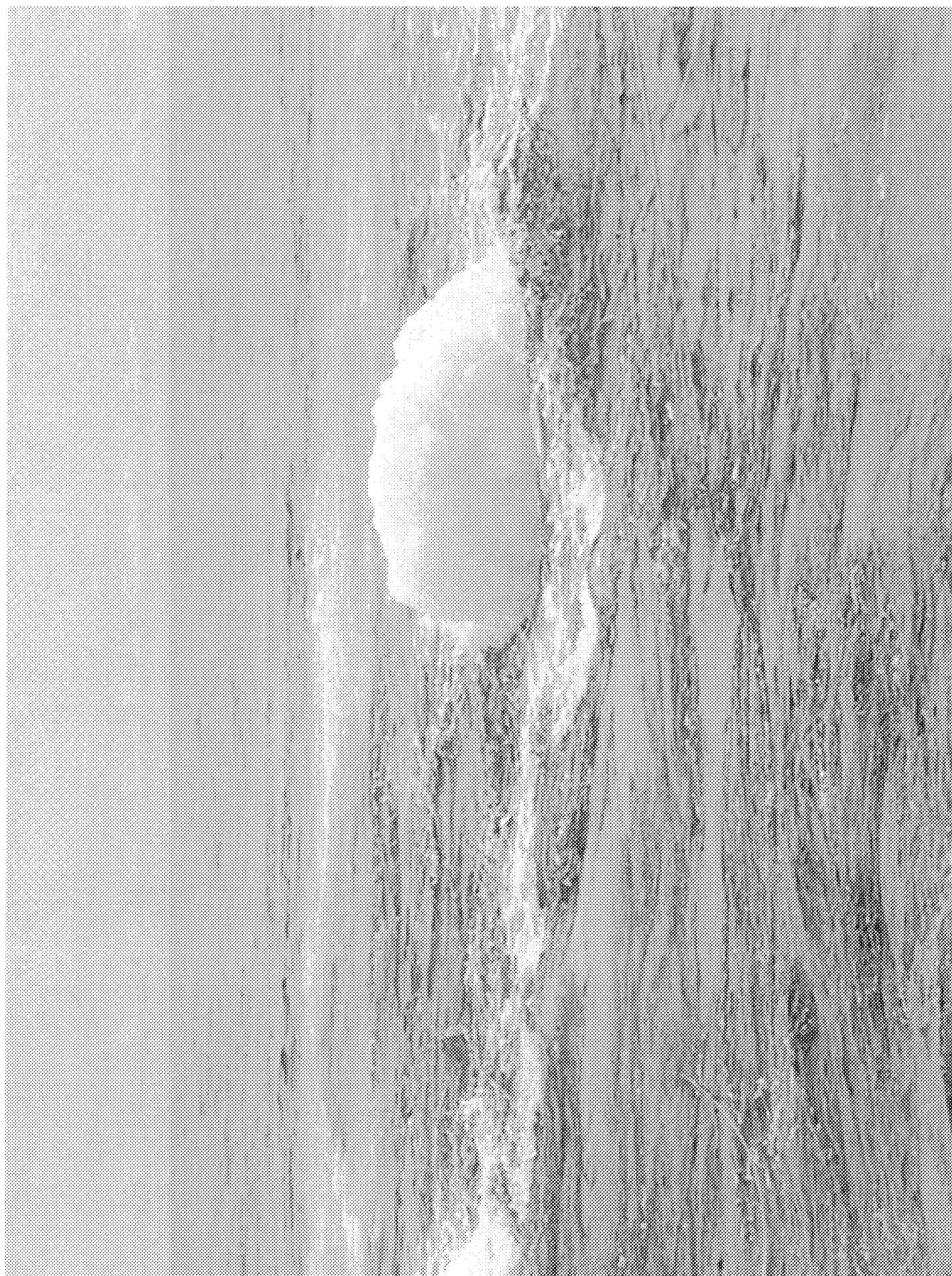
Seismic Surveys:

- Tens of thousands of high-decibel explosive impulses in order to gather geologic profiles from seabed rock structures.
- Seismic survey vessels tow long cables which trail arrays of "airguns" and acoustic transducers for the purpose of emitting and receiving intense sound waves to evaluate subsea geologic formations.
- Common seismic survey configurations involve 24 airguns in each array.



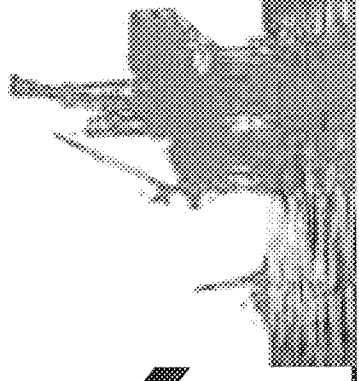






U.S. Department of Interior, Minerals Management Service (MMS)

- **Five-Year OCS Program establishes the size, timing, and location of leasing actions.**
- **Broad Secretarial Discretion.**
- **Comment period for 60-days.**



U.S. Department of Interior, Minerals Management Service (MMS)

**Anticipates lifting of congressional
OCS moratorium and Presidential
Withdrawals in three areas:**

- Coast of Virginia, Mid-Atlantic.**
- Southwest Florida.**
- Alaska's Bristol Bay.**

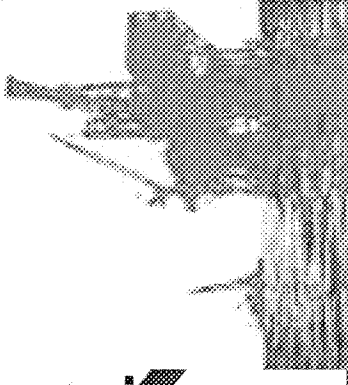


Rep. Peterson's

Natural Gas

Legislation:

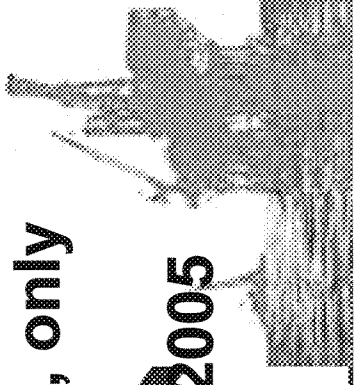
- Drilling impacts similar to offshore oil.
- Discharge of drill muds and cuttings.
- Radioactive discharges in Gulf areas .
- Air quality issues, on and offshore.
- Pipeline construction impacts.
- Waterborne spills of liquid gas condensates.
- Shoreline industrialization.



~~“Ocean State Options Act”, proposed in 2005 House Budget Reconciliation~~

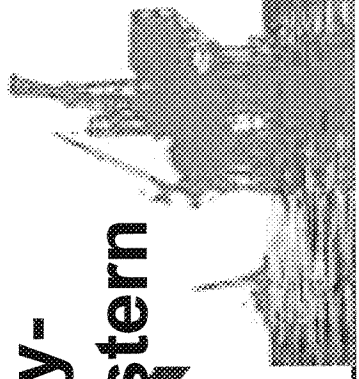
~~Package by Rep. Pombo~~

- ~~Would immediately rescind OCS moratorium nationwide, no further congressional control over offshore drilling decisions.~~
- ~~Coerce coastal states into accepting new offshore leasing.~~
- ~~States could request 5-years of protection, only twice, for 10 years total.~~
- ~~Would undo “OCS Inventory” in previous 2005 energy bill.~~



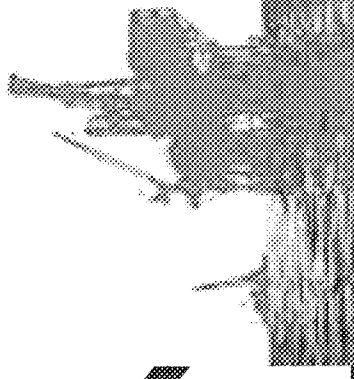
Nelson/Martinez bill:

- **Protection for all states subject to Presidential Withdrawals, including California, extended from June 30, 2012 until June 30, 2020.**
- **Florida gets 150-260 mile permanent “exclusionary zone” all around state.**
- **All non-producing leases in the Florida “exclusionary zone” bought back using existing revenue stream from already-producing leases in Central and Western Gulf of Mexico.**



Domenici bill:

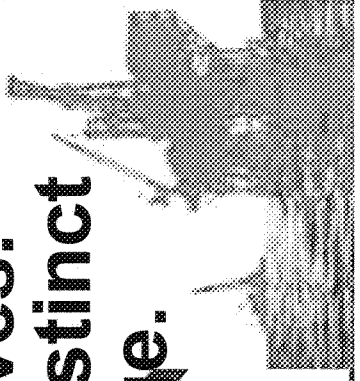
- Opens almost all of Lease Sale #181 Area in the Eastern Gulf of Mexico off of Florida's Gulf Coast and Panhandle.



Radar Satellite

Detection of Slicks

The RADARSAT-1 satellite is sensitive to changes in ocean surface texture - giving different return signal information for different surfaces. Oil on water dampens ripples and waves. As a result, oil slicks appear as distinct areas of darkness on a radar image.

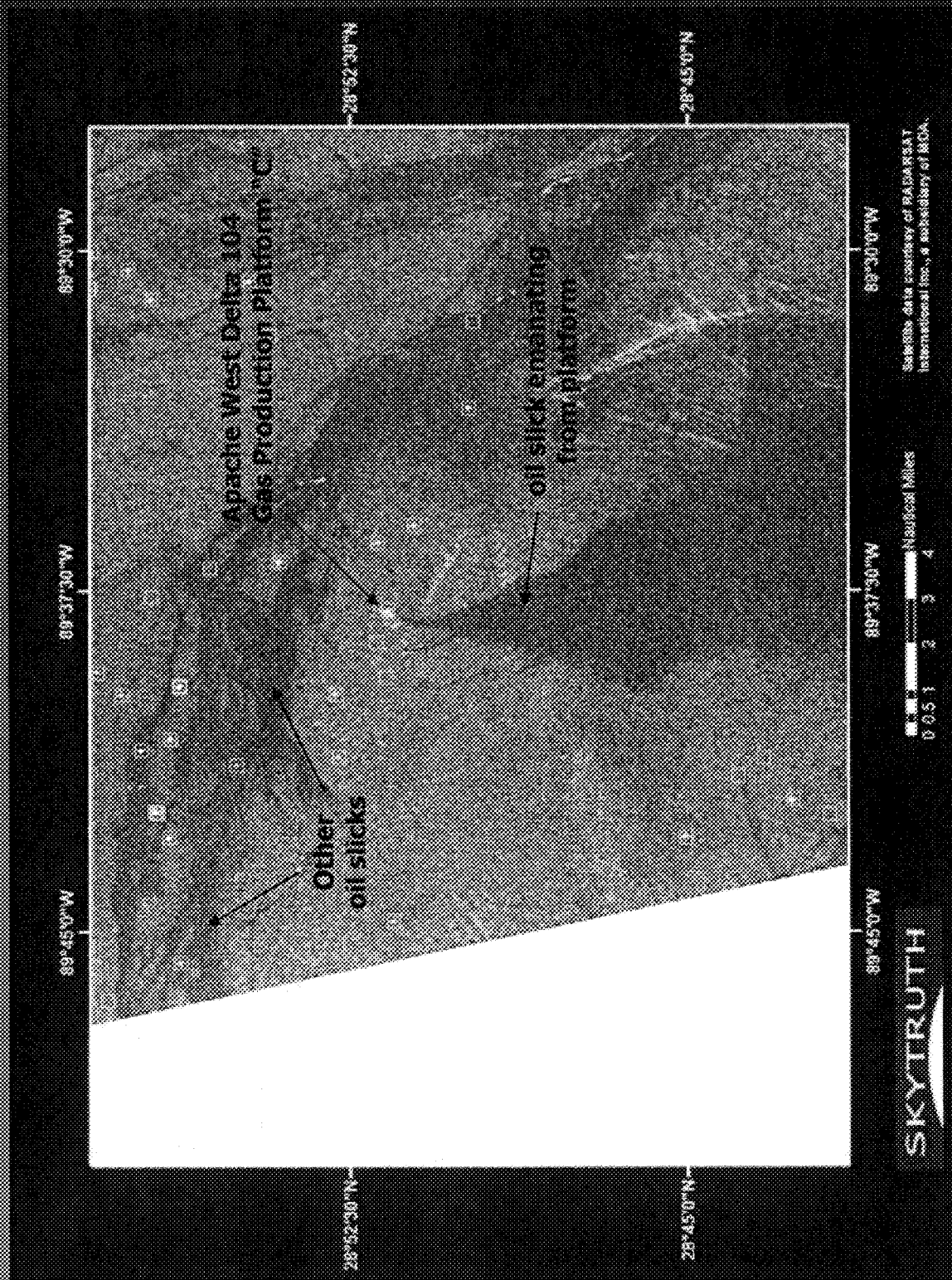


SKYTRUTH

OIL AND GAS PIPELINES
SOURCE: MINERALS MANAGEMENT SERVICE

HURRICANE FORCE WINDS
TROPICAL STORM FORCE WINDS
SOURCE: NOAA / NATIONAL HURRICANE CENTER

200 MILES



September 2

Apache West Delta 104
Gas Production Platform "C"



SKYTRUTH

0 0.5 1 2 3 4 Nautical Miles

Satellite data courtesy of RADARSAT International Inc., a subsidiary of BDA.

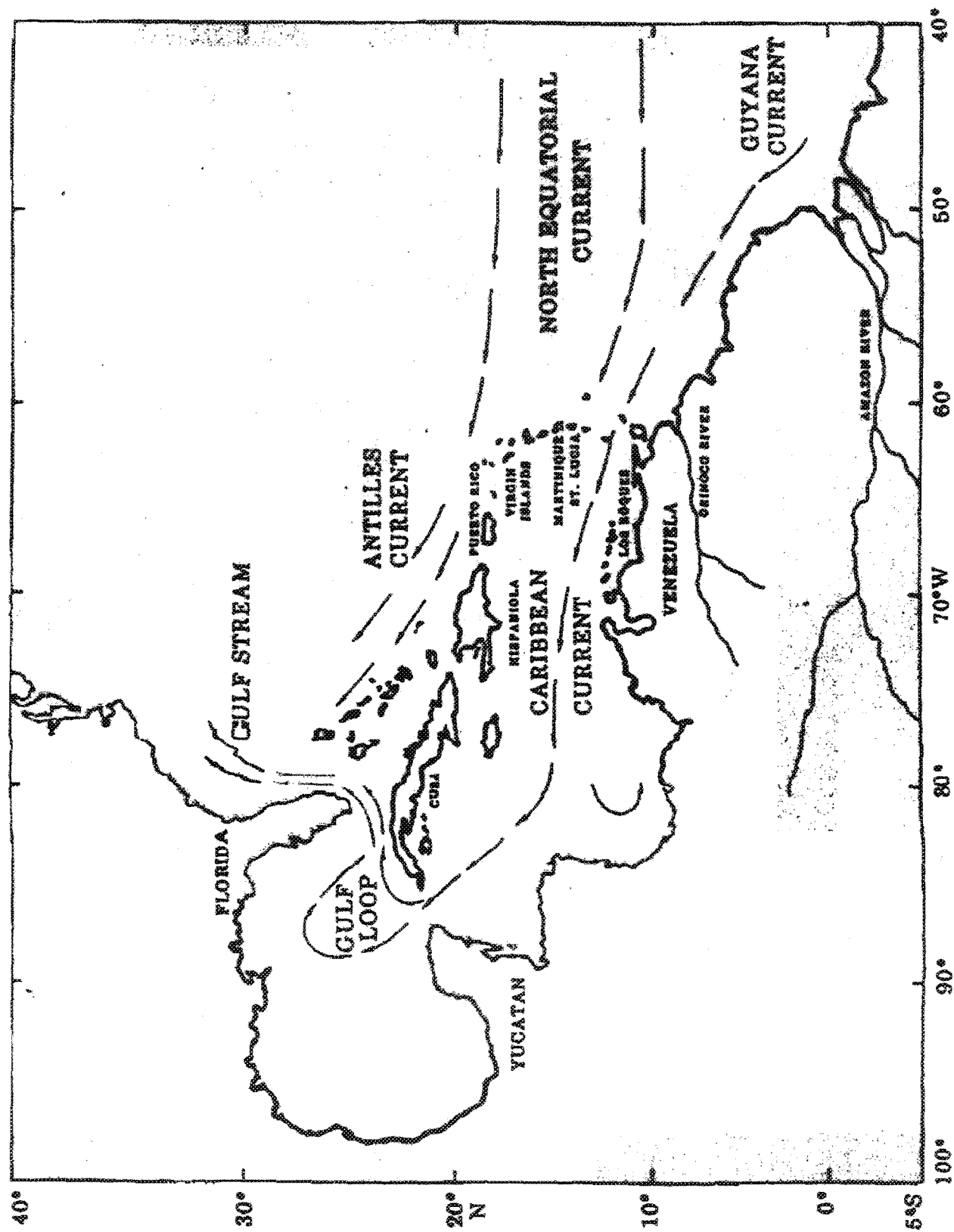
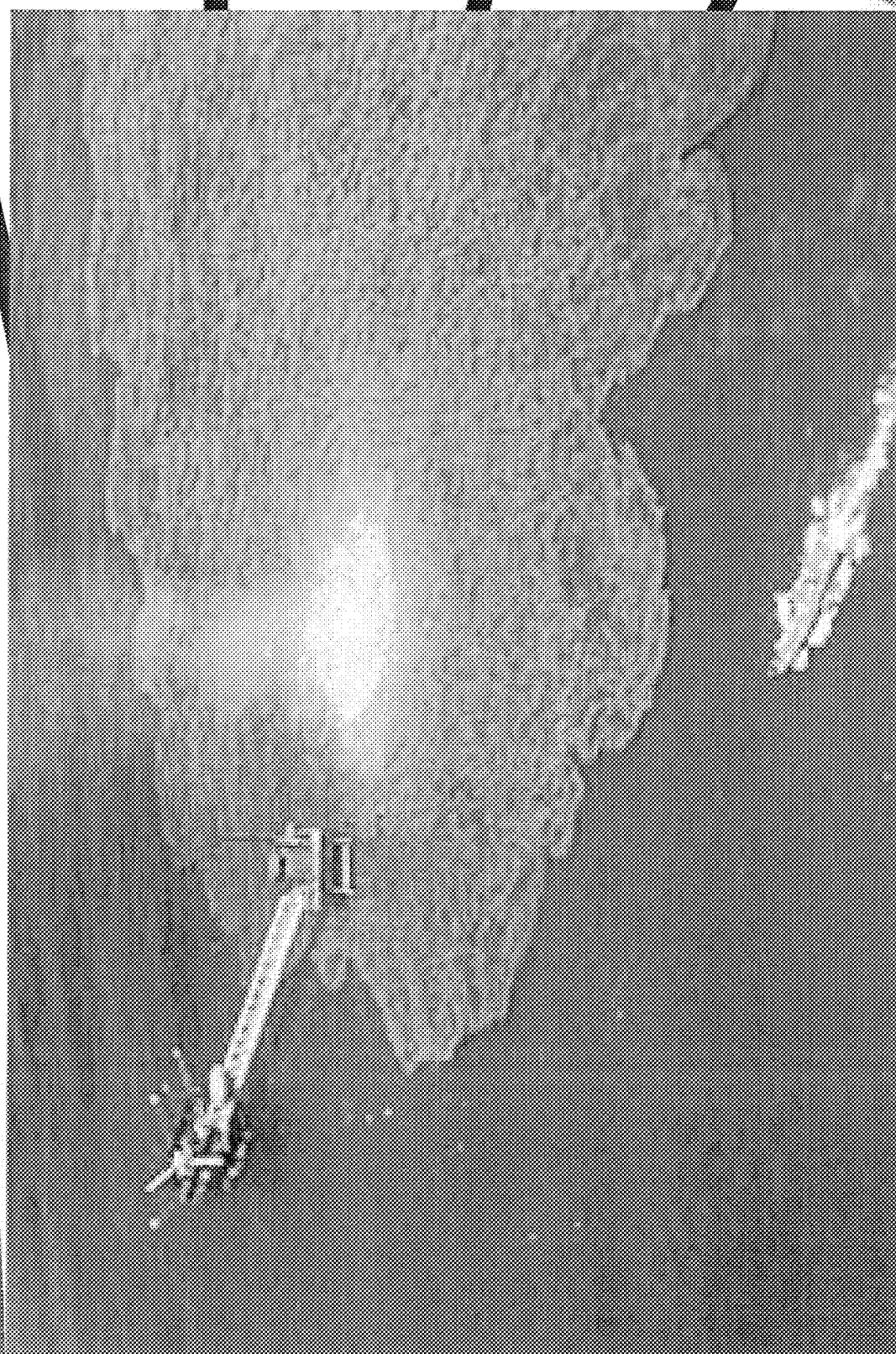


Figure 2. Schematic Caribbean circulation drawn from pilot charts [from Duncan *et al.*, 1982].

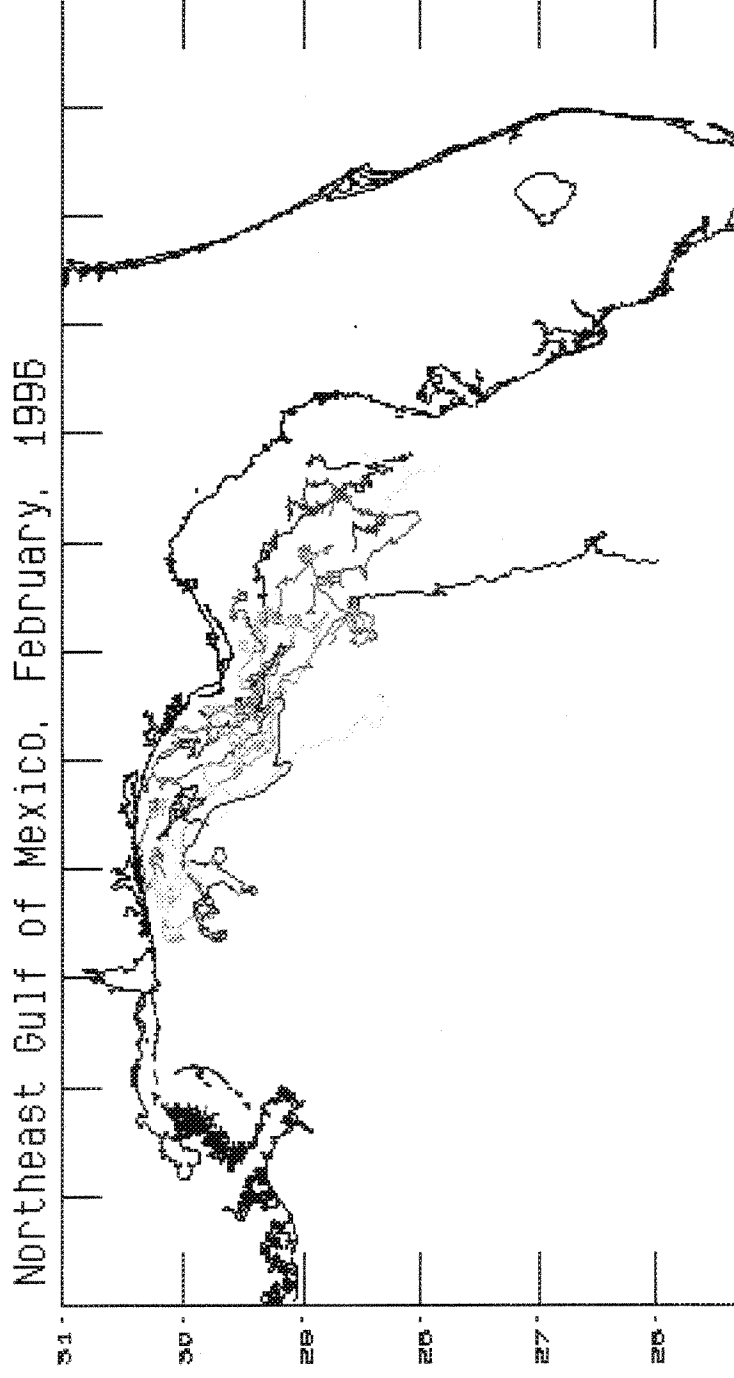


Oil Spills, Ocean Currents, and the U.S. Minerals Management Service

W. Sturges
Department of Oceanography
Florida State University
sturges@ocean.fsu.edu

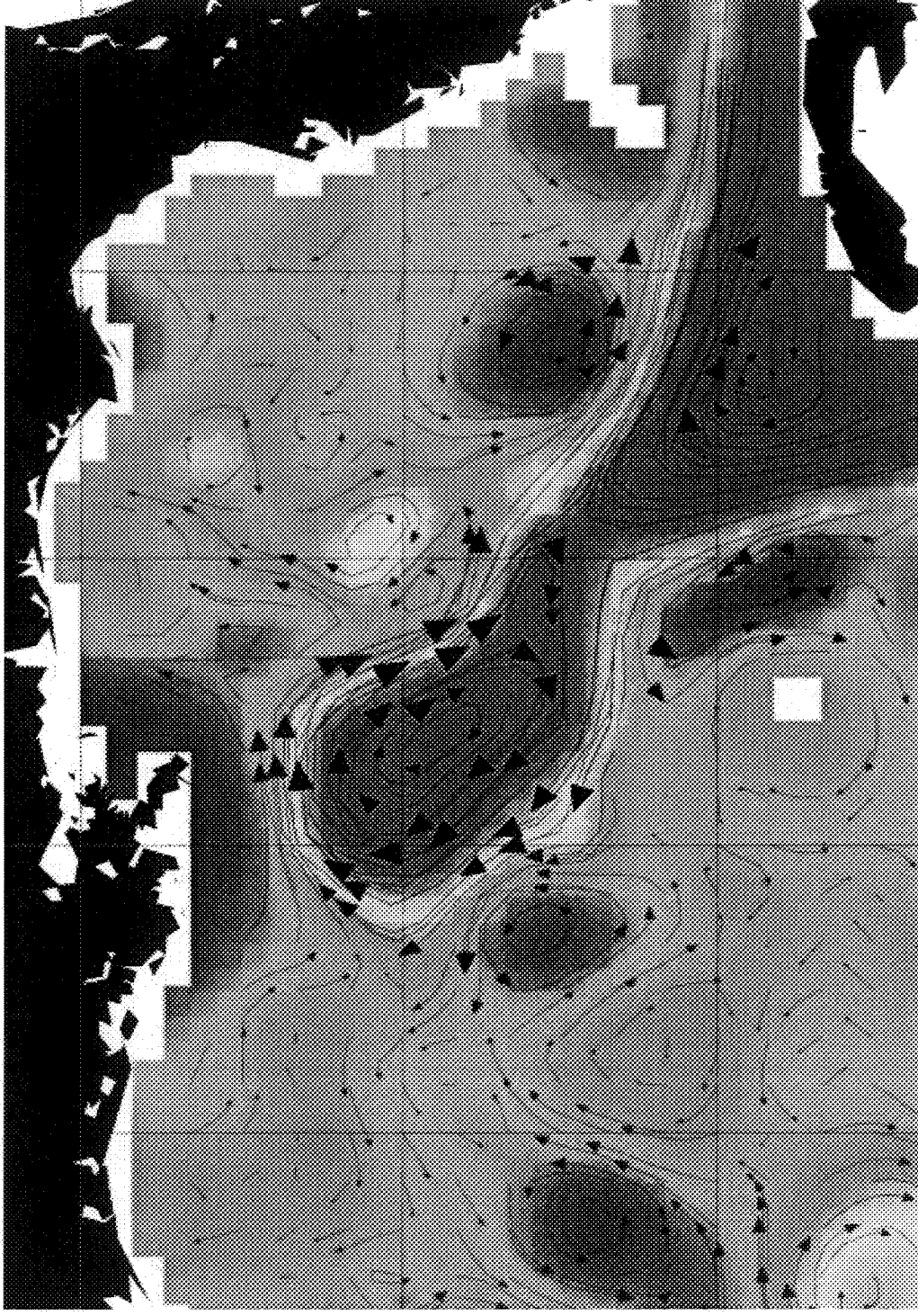
Three Topics to cover briefly:

1. Currents in Shallow Water as Observed with Near-Surface Drifters



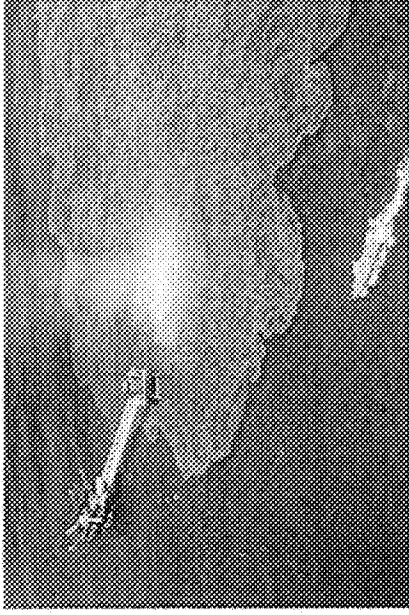
- An example of how far surface drifters move, back and forth, during a single month.

2. Currents in Deep Water: the Loop Current and large Eddies, Observed from Satellites

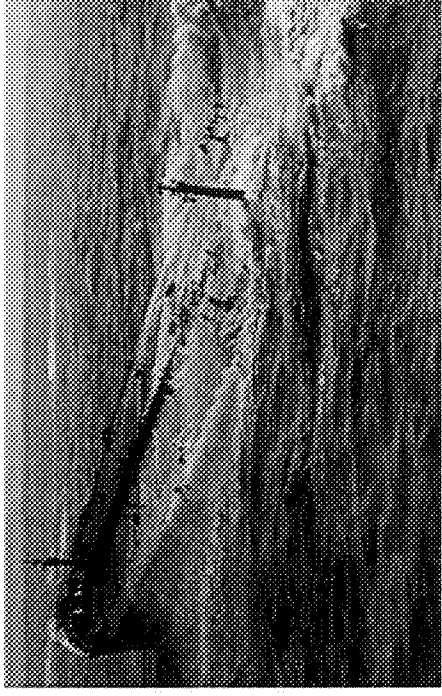


- All of these satellite altimetry images are from Bob Leben's work at Univ. Colorado.

3. And a Brief Discussions About Things We Sincerely Hope Will Not Happen Here



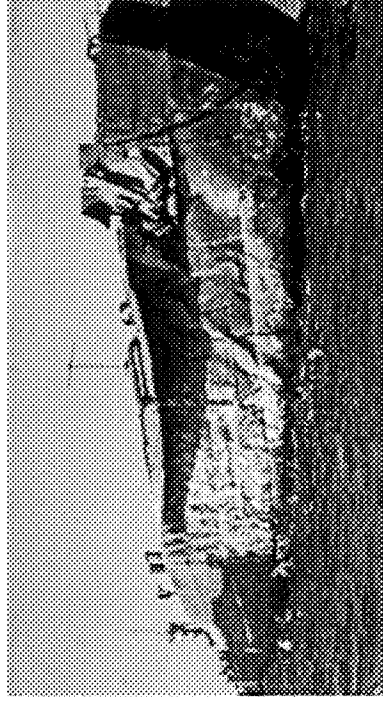
Ixtoc - Ciudad del Carmen



Amoco Cadiz



Burma Agate - Galveston

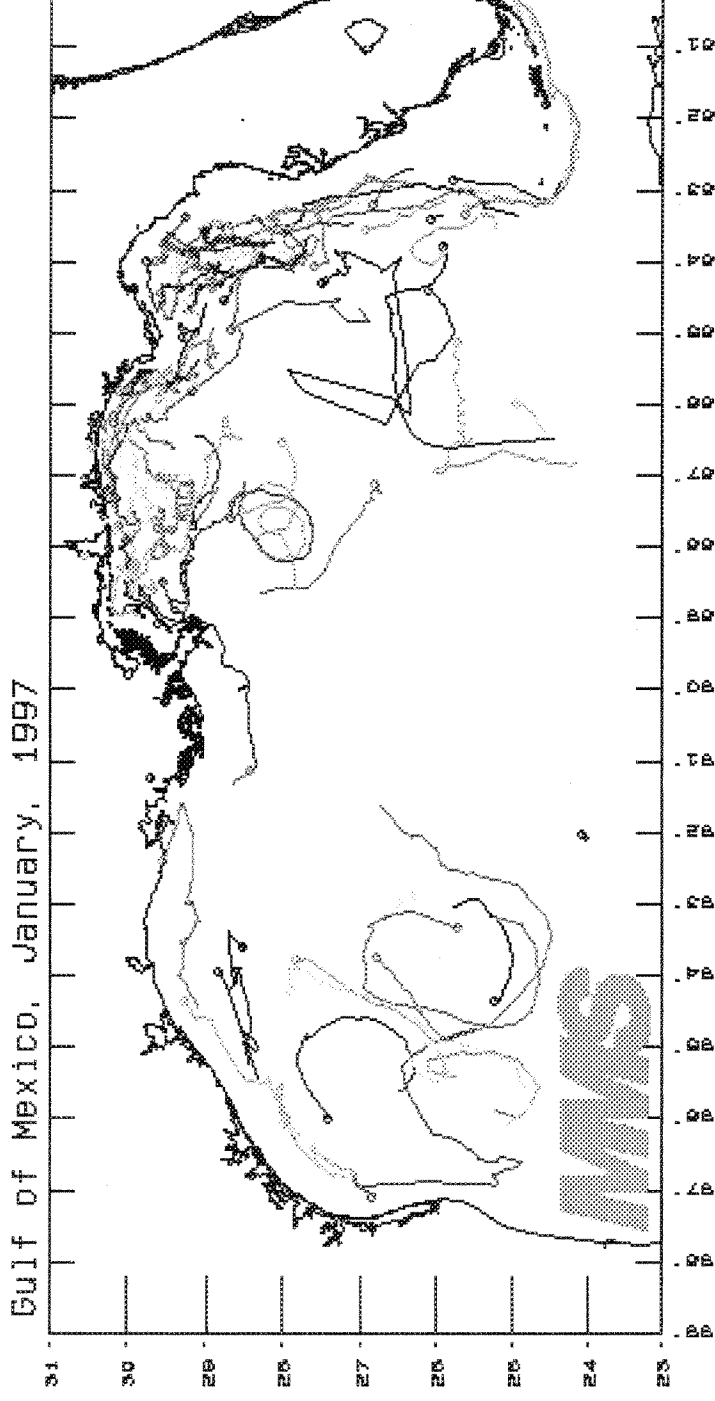


Bouchard - Tampa Bay

What can Happen to Oil That Is Spilled into the Ocean?

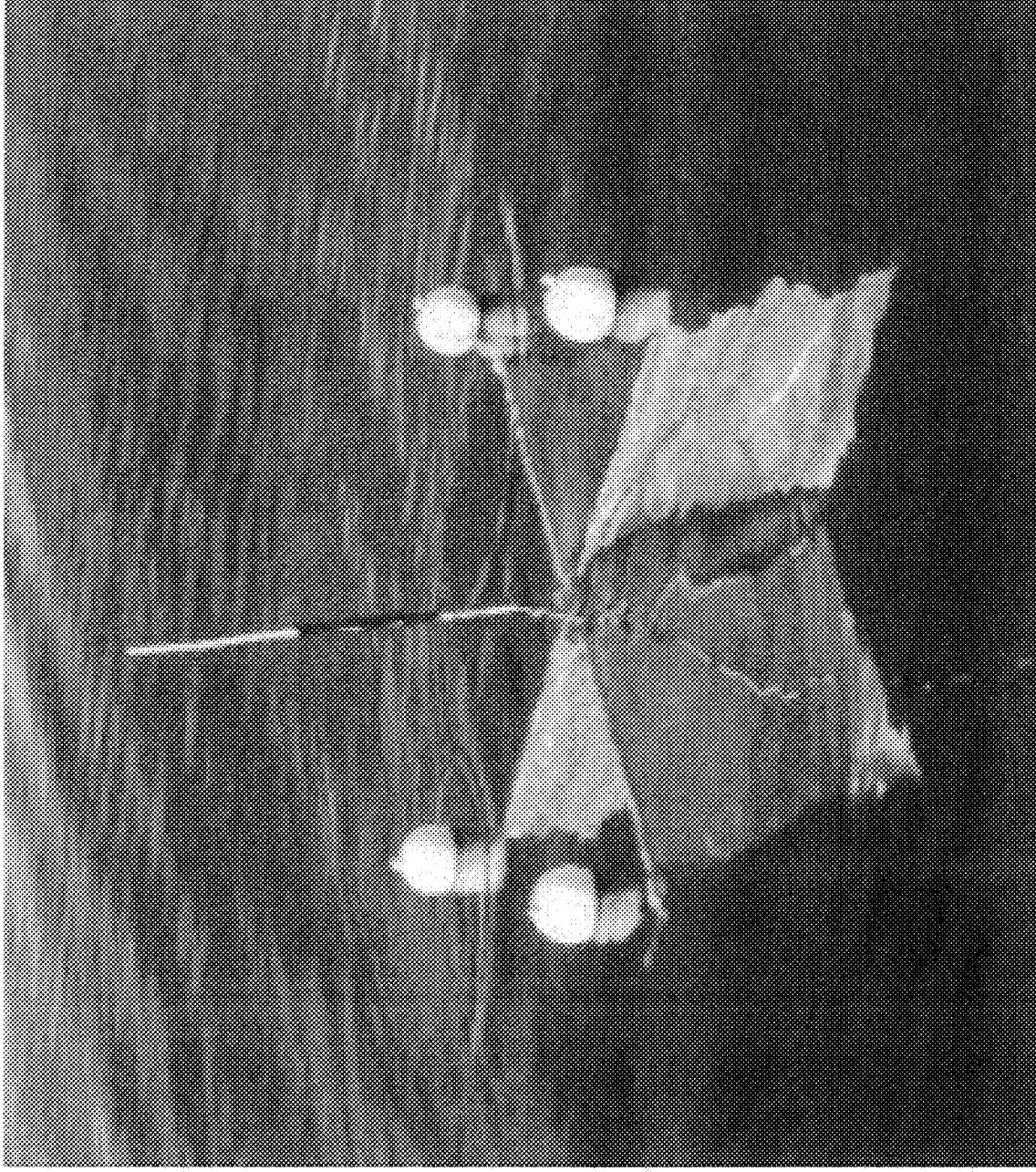
- It can wash up on the beach
- It can burn
- It can sink to the bottom
- It can be mixed by waves into a “chocolate mousse” or into tarballs
- It can be blown offshore
- Some fraction can evaporate
- Some fraction can be degraded by bacteria
- It can possibly be scooped up by recovery barges or absorbed by various techniques

Drifter Studies on the West Florida Continental Shelf



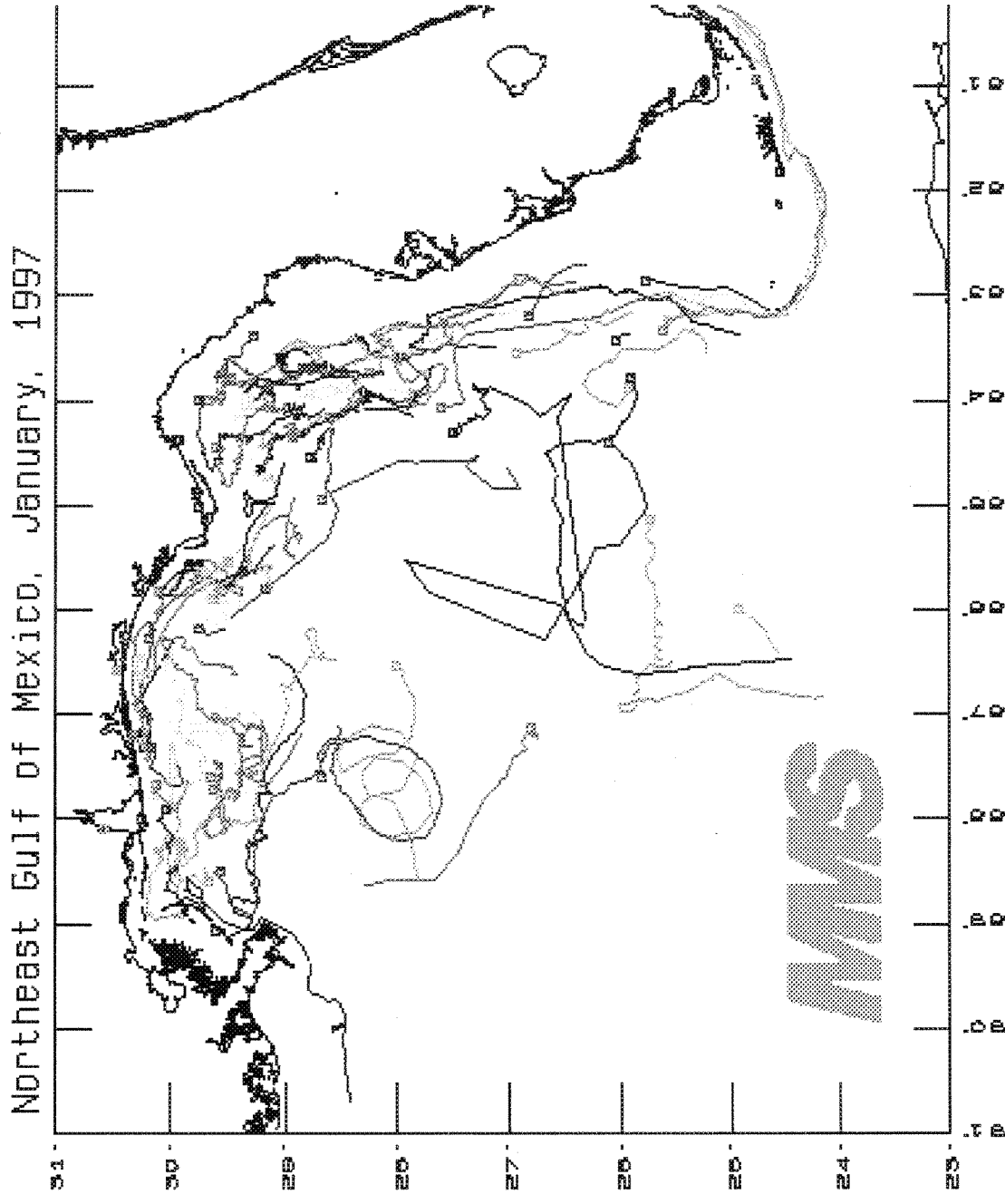
Motions of Surface Drifters in Jan. '97 after Being Released Monthly Since Feb '97. The tracks here include only 4 months of drifter deployments. They were deployed in shallow water between Pensacola and Tampa.

The Air-dropped, Satellite-tracked Drifters -- 1 m wide

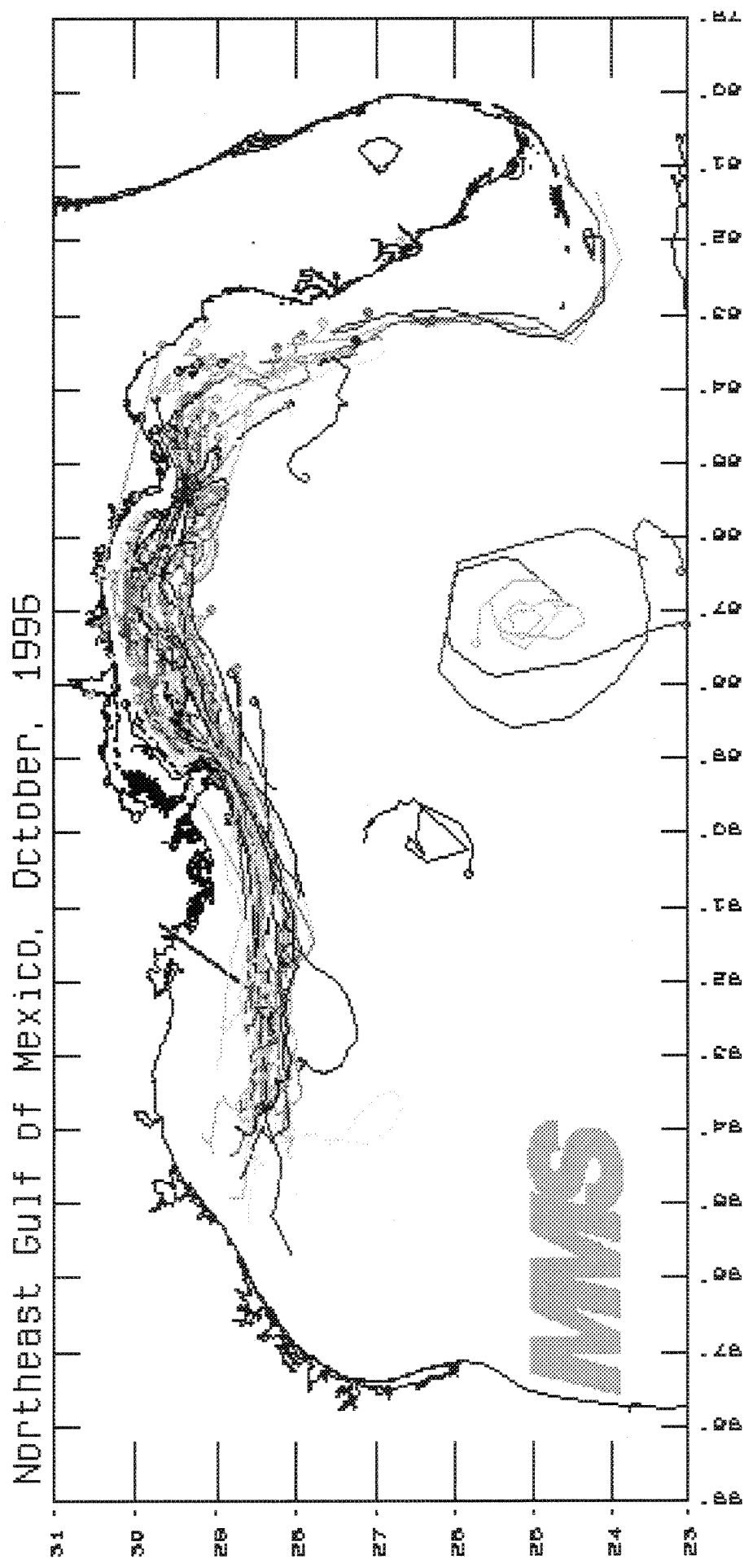


Motion of Surface Drifters in One Month

Different colors indicate different individual drifters; they mostly just go back and forth, but some have escaped off the shelf. All were launched in less than 50 m depth.



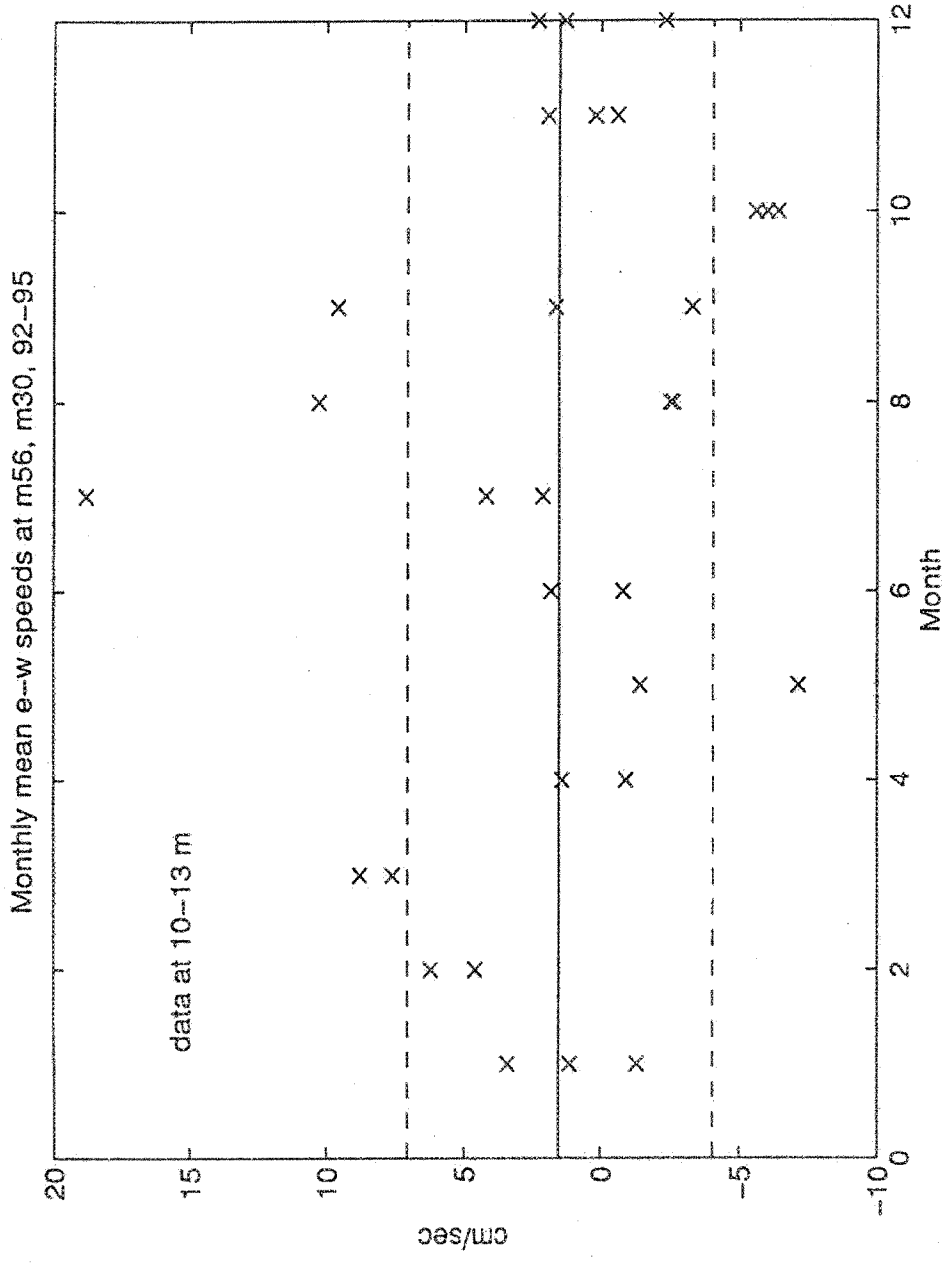
Sometimes a BIG Wind Event Comes By




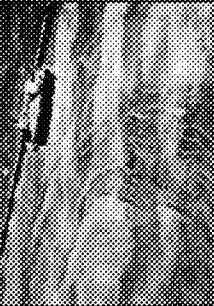
Again, the motions over a single month. Same deployment area.

- Now that we have all this data, one of the standard questions people ask is: “*What is the mean flow?*”
- It turns out that is not a terribly useful thing to know.

The Currents Mostly go “Back and Forth”



Mean monthly speeds at several current meters offshore of Pensacola at the proposed Chevron site, '94-'97.

[HOME](#)
[ABOUT US](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)
[PETROGUARD](#)

The Three Power Hitting Solidifying Absorbents For Oil and Chemical Spills

Chemical Spill Response
Oil Spill Response
Booms, Pillows, Blankets & Socks
High Capacity Filtration Media

ABSORB
HYPER-IMMOBILIZE
STABILIZE
REDUCE FIRE HAZARD
PERMANENTLY BOND
INHIBIT OR HALT TOXIC VAPOR PRODUCTION
REDUCE CLEANUP MAN-HOURS
DECREASE OPERATOR EXPOSURE
COST EFFECTIVE

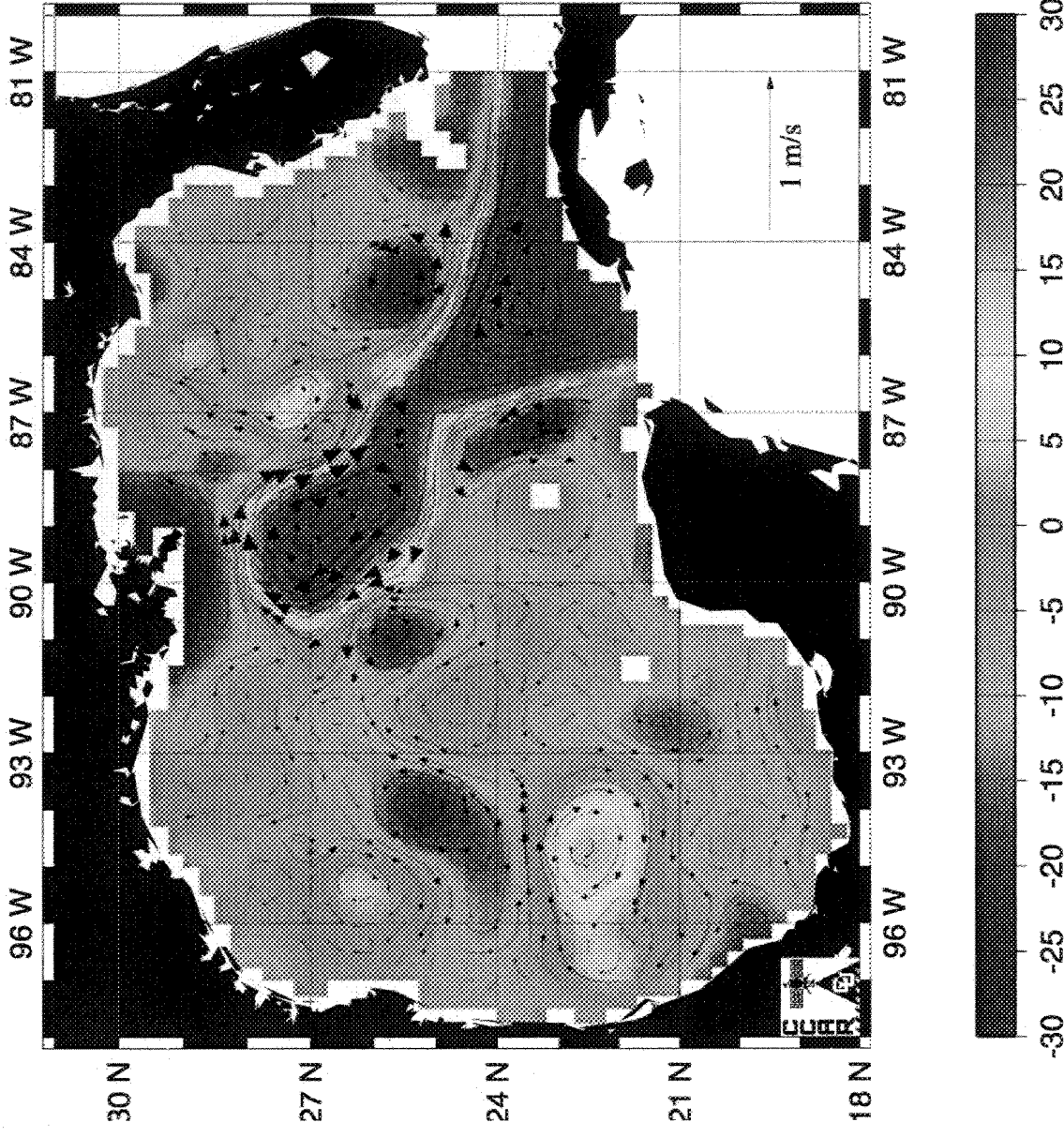
PURE PARTICULATE ABSORBENT FOR HAZARDOUS CHEMICAL SPILLS
PetroGuard® Hyperimmobilizing Destructive Powder Solidifying Absorbent
 PetroGuard is a hydrophobic, granular polymeric absorbent used to immobilize liquid hazardous chemicals, bonding them into a solid matrix.
 One cubic foot of PetroGuard will absorb up to 7 gallons of liquid hydrocarbons.

BLENDED POLYMERIC PARTICULATE ABSORBENT FOR OIL SPILLS
PetroGuard® High Capacity Solidifying Absorbent

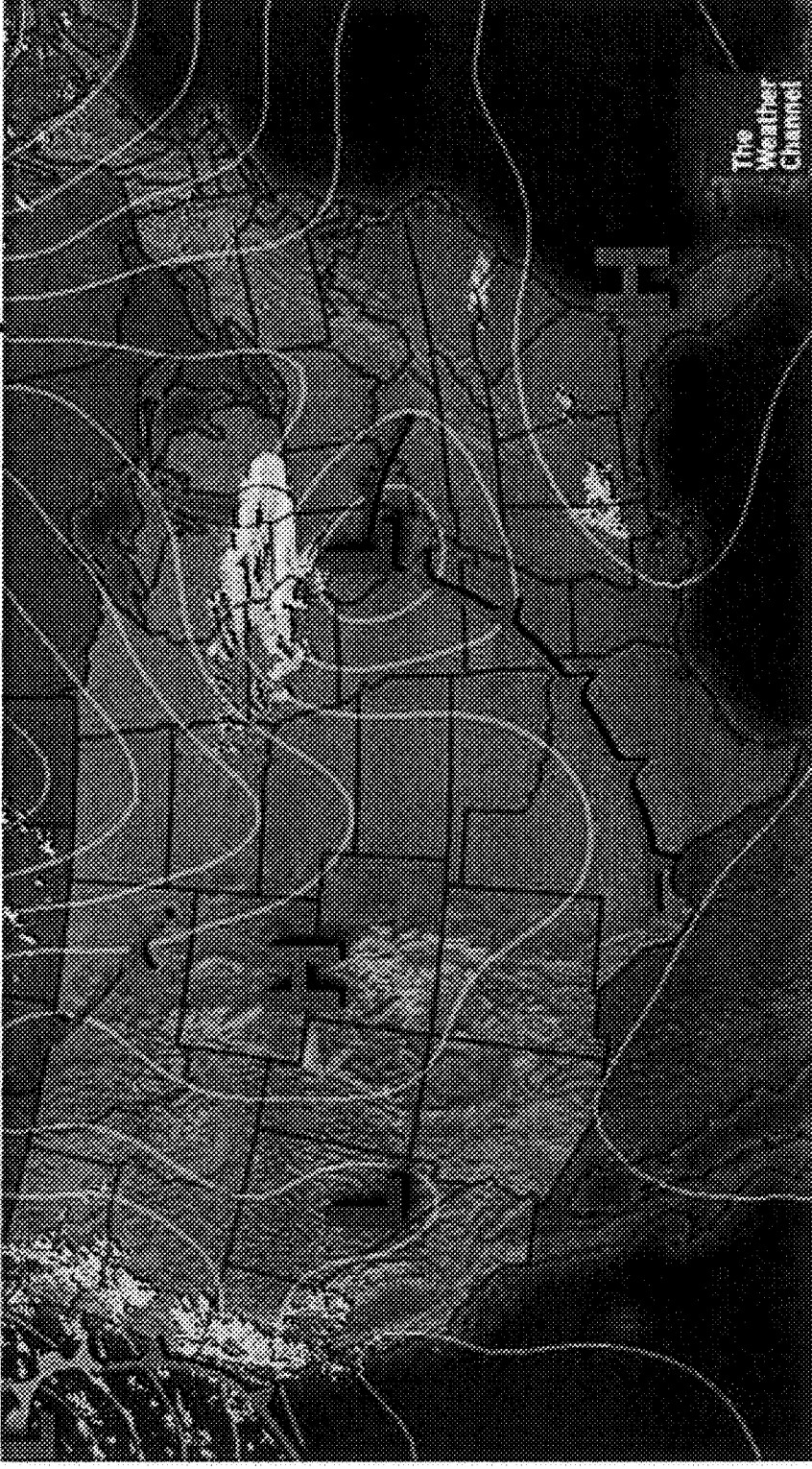
There seems to be a pervasive assumption that if we have three or four days to get to the spill, it can be cleaned up safely.

What if the Stuff is Blown Offshore -- or begins there?

A view of the
“Fully-Extended”
Loop Current;
Sea-surface
topography from
a suite of satellite
altimeters. The
next few slides
show how the
Loop Current
grows and sheds
“rings.”

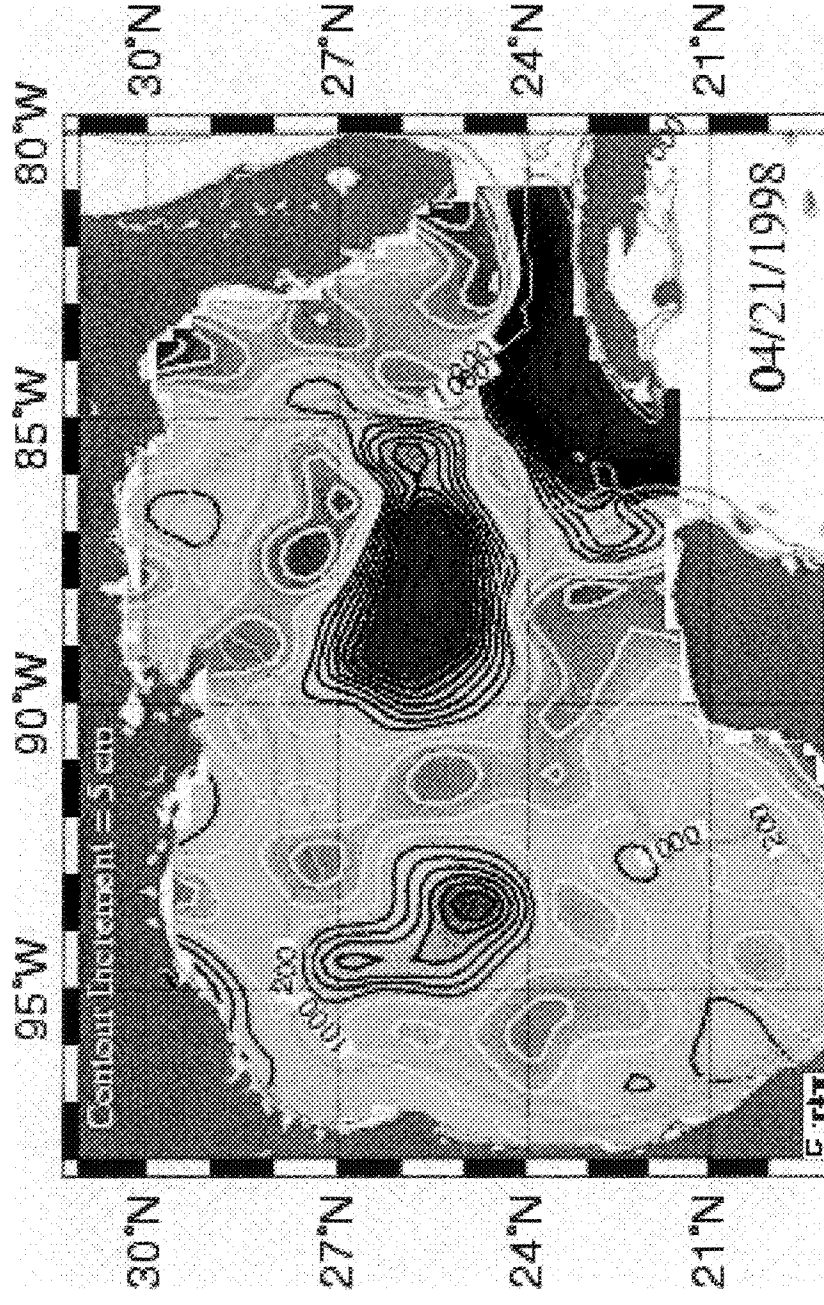


“Ocean Weather” is very much like Weather of the Atmosphere



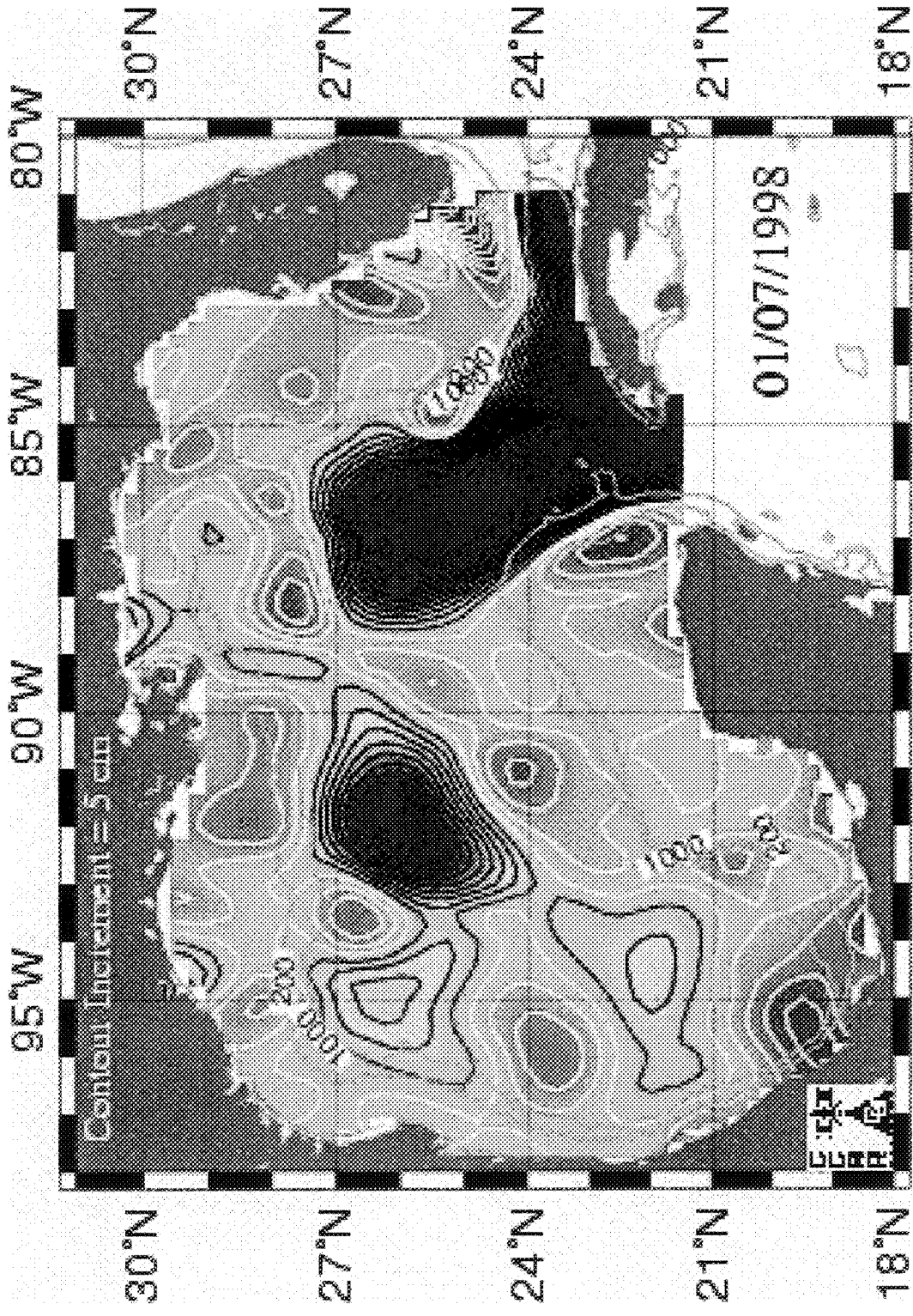
We see high and low pressure cells in the atmosphere; they are found in the ocean as well.

The Loop Current in a Minimum Configuration

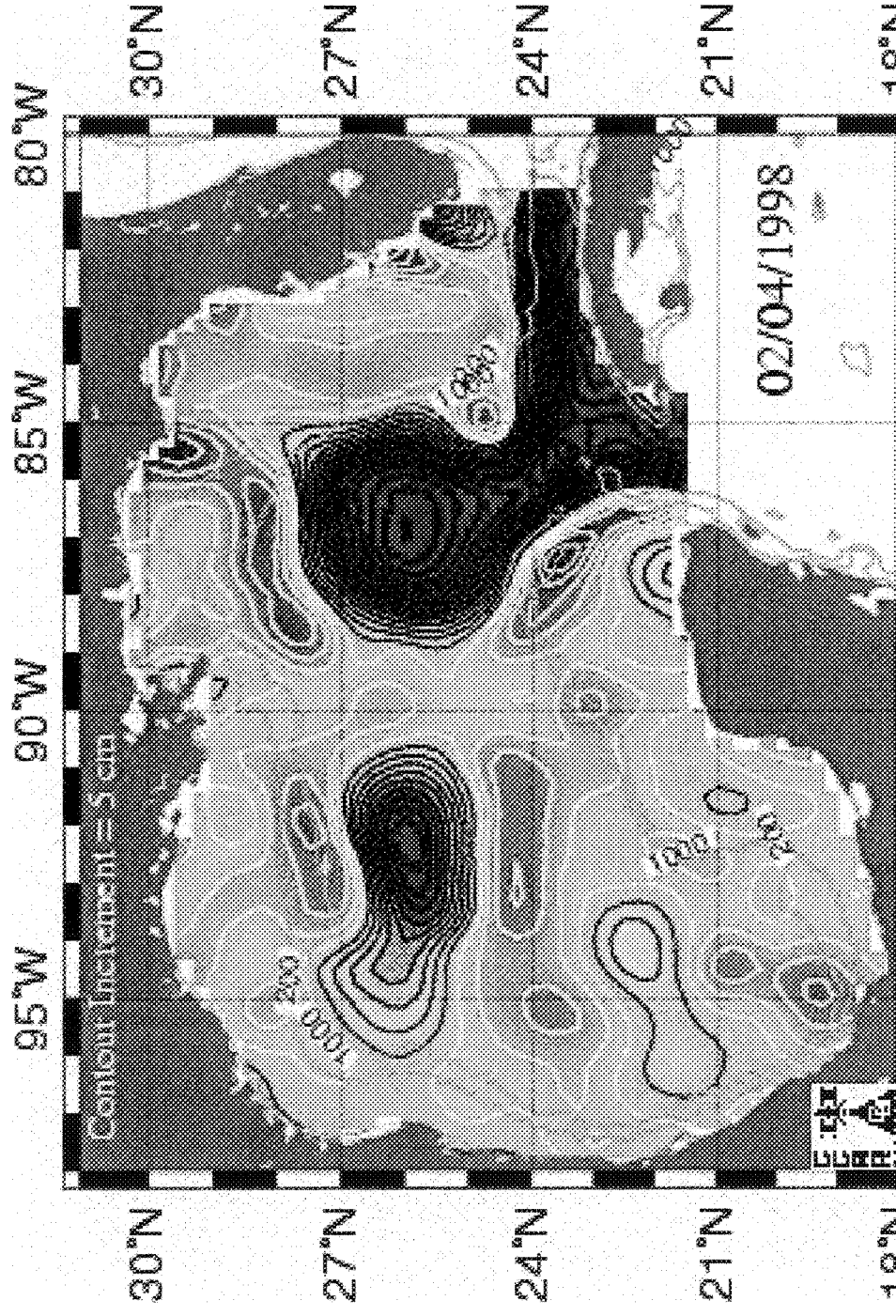


- The warm flow comes out of the Caribbean, through the Gulf, and forms the Gulf Stream. These are contours of height, not temperature.

Then the Loop Current “Grows”
to the North over a few weeks.



Then the Ring “Pinches Off” and Drifts to the West



But we do not know WHEN it will pinch off ! :- (Even the best numerical models, at present, can't predict “when.”

If you are interested in the
way the Loop Current
advances, retreats, and sheds
those rings, we have a movie
of daily images for 1993 - on.
Also movies of the near-shore
surface drifters.

The Problem for a Drill Rig

- The current speeds in the Loop Current (or in a ring that has separated from the Loop Current) are three to four knots. A long drill string cannot withstand these forces, so the rig has to be shut down, at a cost of roughly \$one million per day. Yet the best modern numerical models can't predict when a ring will separate. The models are "forced" using the satellite observations ... but prediction is as yet poor.

The web page for the MMS Gulf of Mexico region

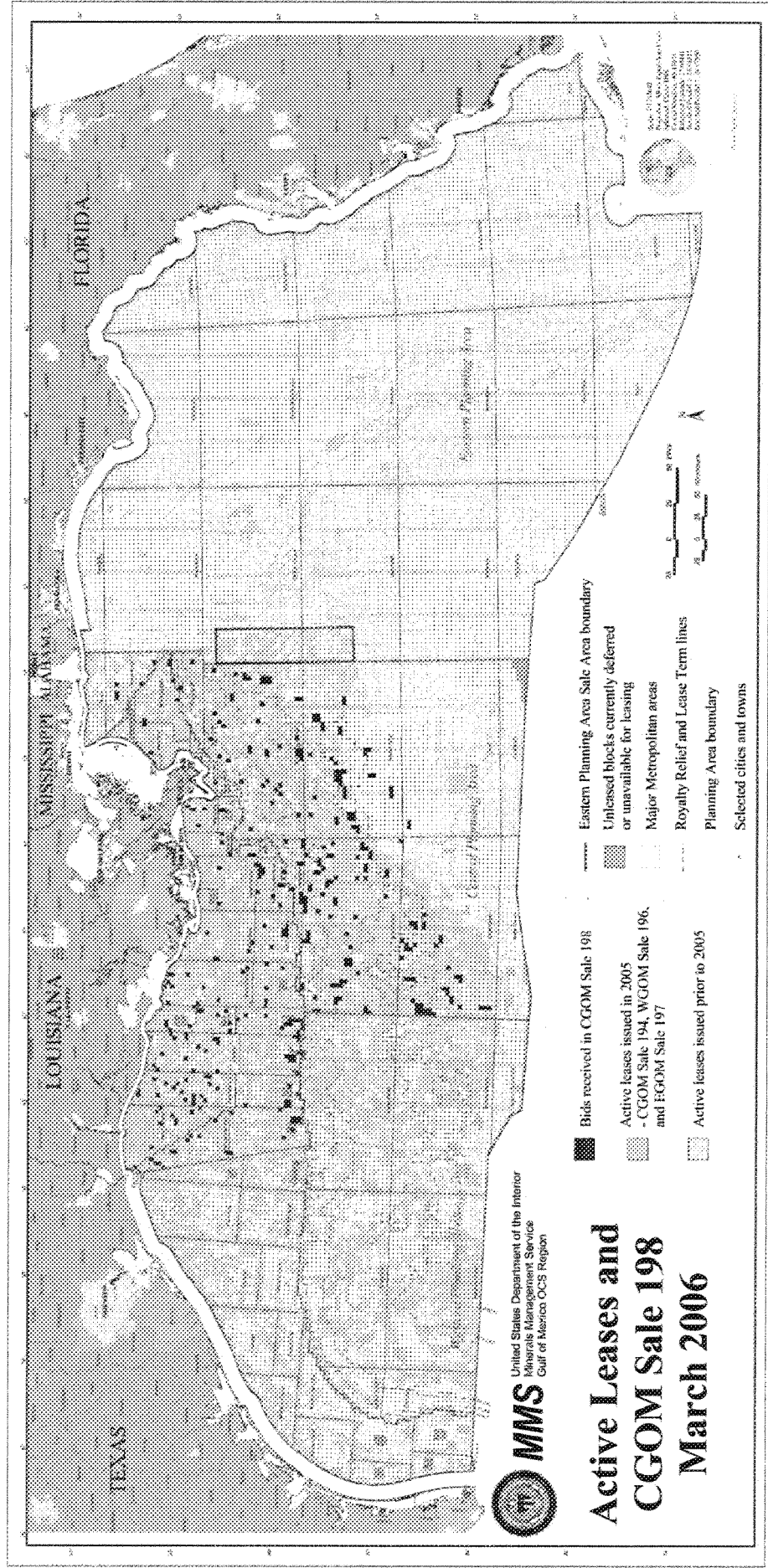
| | | |
|--|--|---|
| MMS | Home Search Topic Index About MMS What's New | U.S. Department of the Interior |
| News Releases | Minerals Management Service | |
| Tech Announcements | Gulf of Mexico Region | |
| Publications | | |
| Speeches | | |
| Feature Stories | | |
| Professional Papers | | |
| Press Releases/Reports | | |
| Upcoming Events | | |
| Fast Facts | | |
| Products/Free Data | | |
| Atlantic Information | | |

Press Releases and Reports

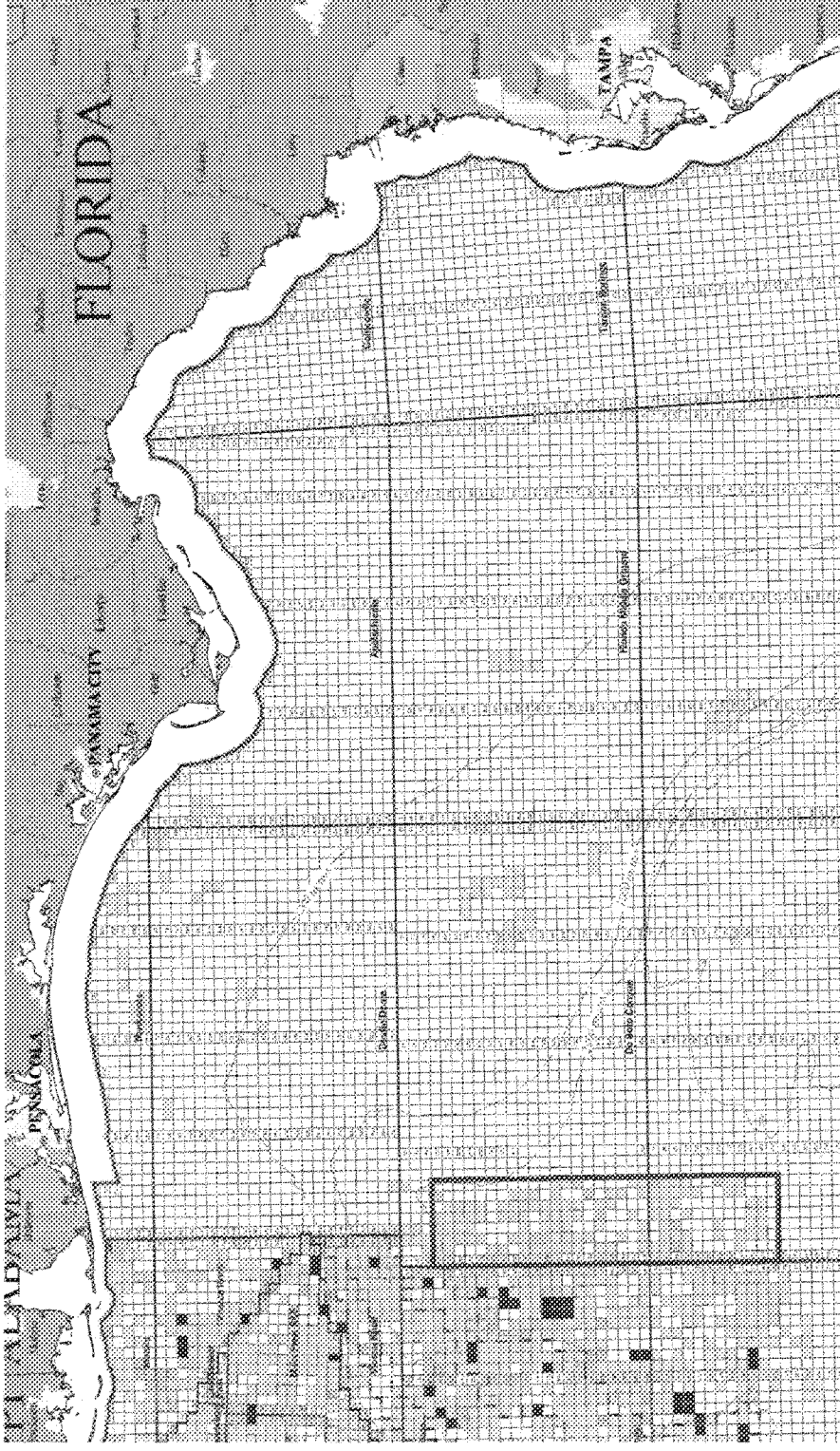
Provides the latest announcements, news, publications, papers, speeches, and innovations about mission-related activities and events of the Agency. This page includes the latest information about policies and programs including deepwater issues, offshore activities and sand and gravel mining.



Active Leases and the March 2006 Sale.

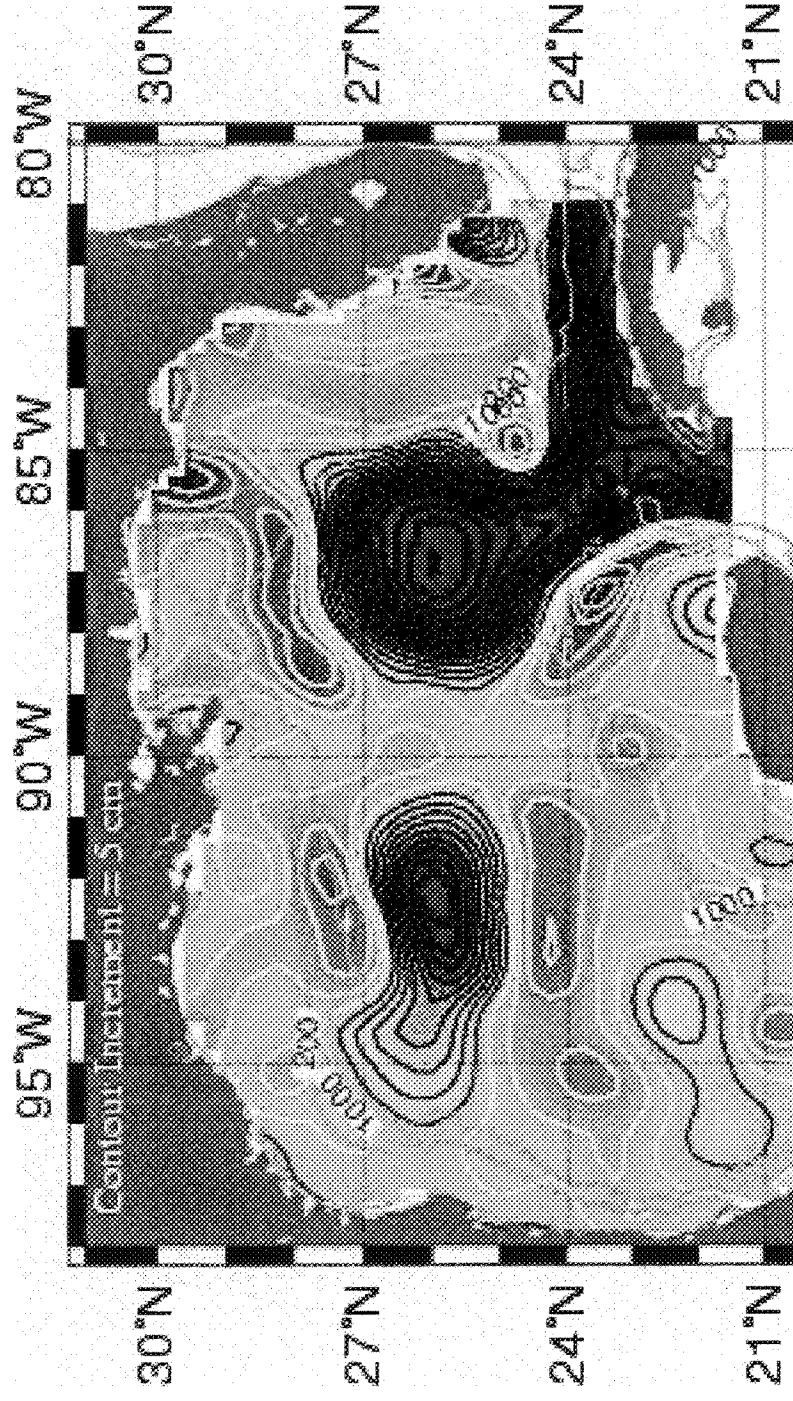


Why do we care so much about the Loop Current in this Context?



- The pink area shows a recent study area associated with the March lease sale; note where the bottom is.

Notice that the bottom of the new lease area sits in a regular Loop-Current position

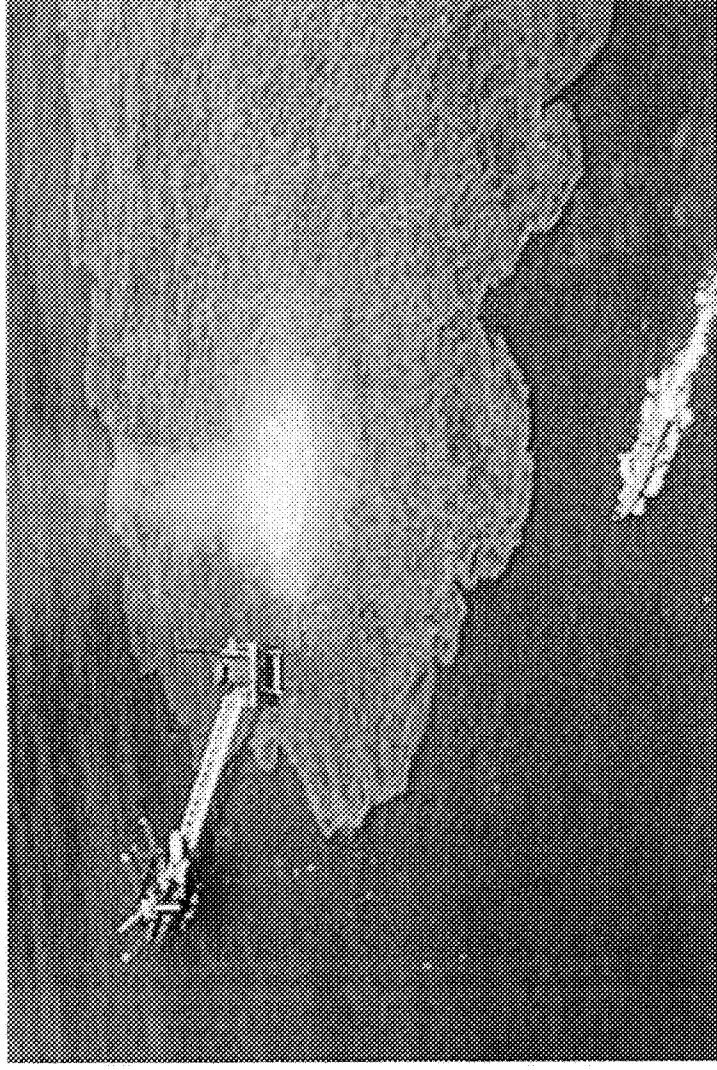


So the Loop Current can take any “problems” to the edge of the shelf off Tampa, or the Keys or Miami Beach or the east coast of Florida.

It is interesting, how they describe the location of the lease sale.

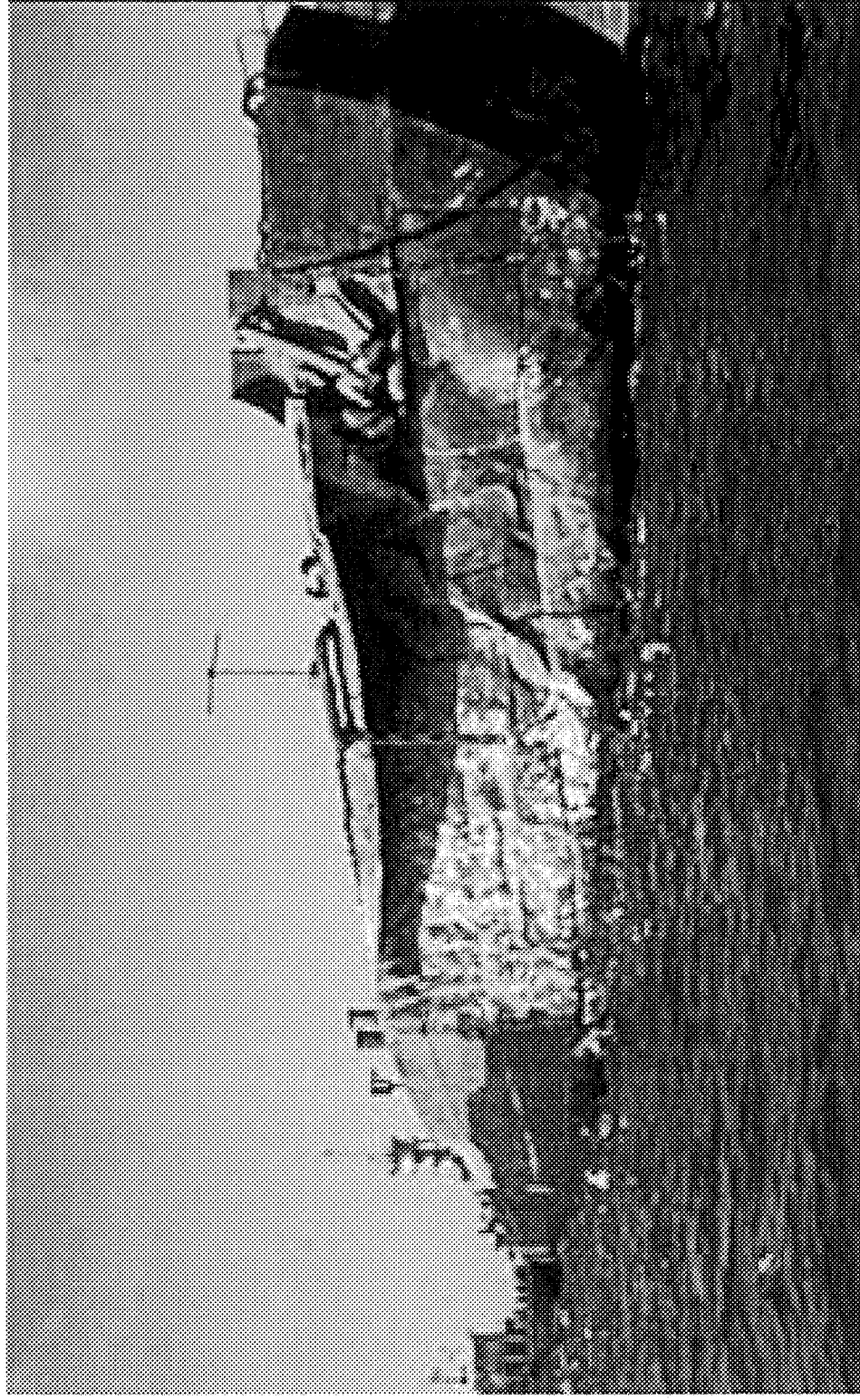
- The NewsRoom Release: #3478 Date: March 15, 2006
- **Central Gulf of Mexico Sale 198 Attracts \$978,310,887 in Bids**
- NEW ORLEANS – Near record oil and gas prices led to robust bidding in an offshore federal lease sale today. The Central Gulf of Mexico Lease Sale 198, garnered \$588,309,791 in high bids from 82 companies for oil and natural gas leases in the Federal waters of the Gulf of Mexico. The total of all bids was \$978,310,887. This represents a 38% increase over last years Central Gulf Sale.
- In this sale, 4040 blocks comprising approximately 21.3 million acres offshore Alabama, Louisiana, and Mississippi were offered.

A Quick Look at some Memorable Oil Spills;
images and data from the NOAA web pages.



- Ixtoc Exploratory Well, 1979, off the coast of Mexico, western Gulf.

- The IXTOC I exploratory well blew out on June 3, 1979 in the Bay of Campeche off Ciudad del Carmen, Mexico. By the time the well was brought under control in 1980, *over six months later*, an estimated 140 million gallons of oil had spilled into the bay. The IXTOC I is currently #2 on the all-time list of largest oil spills of all-time, eclipsed only by the deliberate release of oil, from many different sources, during the 1991 Gulf War. The automatic, modern, blow-out preventer was defeated by a manual over-ride, allowing the blow-out preventer to be broken as the blades hit a metal swivel joint. The spilled oil extended well across the U.S. border onto Texas.



• Bouchard - Tampa Bay

- On August 10, 1993, three ships collided in Tampa Bay, Florida: the BOUCHARD B155 barge, the freighter BALSA 37, and the barge OCEAN 255. The BOUCHARD B155 spilled an estimated 336,000 gallons of No. 6 fuel oil into Tampa Bay.



- Burma Agate - Galveston

- On November 1, 1979, the BURMAH AGATE collided with the freighter MIMOSA southeast of Galveston Entrance in the Gulf of Mexico. An estimated 2.6 million gallons of oil was released into the environment; another 7.8 million gallons was consumed by the fire onboard. This spill is currently #55 on the all-time list of largest oil spills.



- Argo Merchant -- Nantucket --
- Not in the Gulf, but some lessons can be learned.

- In December 1976, Argo Merchant loaded 7.7 million gallons of crude oil at Puerto La Cruz, Venezuela, for Boston. Under Capt Papadopoulos, the ship carried two unqualified crew as helmsmen, a broken gyroscope, inadequate charts, and an inaccurate radio direction finder. On December 15, the tanker ran aground on Middle Rip Shoal in position $41^{\circ} 02'N$, $69^{\circ} 27'W$ —about 25 miles southeast of Nantucket and more than 24 miles off her intended course. The thirty-eight crew were rescued, but the shallow waters and the season made it impossible to offload the oil or move the ship. On December 21, 1976, six days later, Argo Merchant broke apart and spilled enough oil to heat 18,000 homes for a year. Northwest winds blew the 60- by 100-mile slick offshore, and coastal fisheries and beaches were spared the worst.



- Amoco Cadiz

- The AMOCO CADIZ ran aground off the coast of Brittany, France on March 16, 1978, spilling 68.7 million gallons of oil. It currently is #6 on the list of the largest oil spills of all time, contaminating roughly 125 miles of coastline.
- The nature of the oil and rough seas contributed to the rapid formation of a "chocolate mousse" emulsification of oil and water. This viscous emulsification greatly complicated the cleanup efforts. French authorities decided not to use dispersants in sensitive areas or the coastal fringe where water depth was less than 50 meters. Had dispersant been applied from the air in the vicinity of the spill source, the formation of mousse may have been prevented.
- High-pressure hot water (fresh water at 2,000 psi, heated to 80° - 140° C) was very effective in cleaning oil from rocky shoreline areas during the third and fourth months of cleanup.

- The argument that arose between the captain of the Amoco Cadiz and that of the captain of the German Tug Pacific was on the issue of LOF (Lloyds Open Form). Captain Weinert thought this a classic LOF case, an oil tanker with damage to its steering gear, rough weather and getting closer to the shore by the minute.
- Lloyds Open Form is a standard legal document for a proposed salvage operation, a four page long contract emitted by the famous Lloyds of London. The cost of the ship and its cargo are taken into account when the arbitrator decides what the pay should be, in 1978, the ship and the cargo were valued at about \$40 million dollars, so Captain Weinert could have made millions on the deal. Captain Bardari of the Cadiz wanted "...towage rate to Lyme Bay." They argued (over the radio) for several days, until the Amoco Cadiz drifted onto the reef.

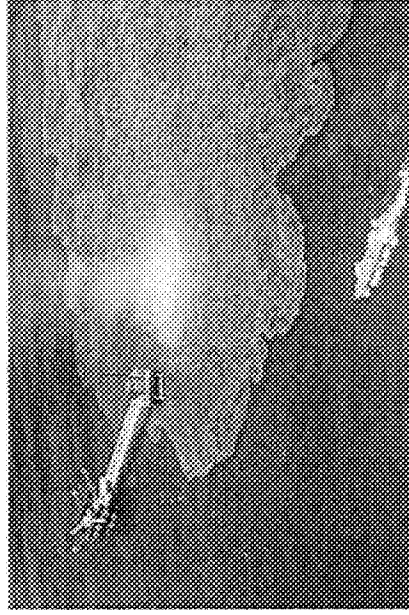
Brief Statistics

- Between 1968 - 2002 there were 119 well documented major spills (that I found on the NOAA web pages), for an average rate of 3.5 per year. Of these, an astonishing 15% are in the Gulf of Mexico -- not counting 3 that were farther up the Mississippi River. Of the 119 total, 26 are as large or larger than the Exxon Valdez.

One last issue.

- How to resolve the dilemma of “Risk versus Reward?”
- Who is being forced to take the risks -- versus who is expecting to get the rewards?

Questions ?



Ixtoc - Ciudad del Carmen



Amoco Cadiz



Burma Agate - Galveston



Bouchard - Tampa Bay

- sturges@ocean.fsu.edu
- <http://www.ocean.fsu.edu/faculty/sturges/sturges.html>